

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-13430
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on July 1, 2009 in Benton Harbor. Claimant personally appeared and testified under oath.

The department was represented by Darlene Leonard (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on July 7, 2009. Claimant waived the timeliness requirements so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

ISSUE

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P) or 90 days (SDA)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P) or 90 days (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is an MA-P/retro/SDA applicant (August 11, 2008) who was denied by SHRT (from March 9, 2009) based on claimant's ability to perform unskilled sedentary work. SHRT relied on Med-Voc Rule 201.27 as a guide. Claimant requests retro MA for May, June and July 2008.

(2) Claimant's vocational factors are: age—43; education—high school diploma; post high school education—none; work experience—dishwasher at [REDACTED], cashier and stocker for [REDACTED], press operator for [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since 2008 when she worked as a dishwasher for a truck stop.

(4) Claimant has the following unable-to-work complaints:

- (a) Inability to stand for long periods;
- (b) Inability to sit for long periods;
- (c) Chronic fatigue;
- (d) Inability to bend, stoop and kneel;
- (e) Poor comprehension.

- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (March 9, 2009):

SHRT decided that claimant was able to perform unskilled sedentary work. SHRT evaluated claimant's disability using all SSI listings at 20 CFR 404, Subpart P, Appendix. SHRT decided that claimant does not meet any of the applicable SSI listings. SHRT denied disability based on Med-Voc Rule 201.27, as a guide.

(6) Claimant lives with her boyfriend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant uses a cane approximately 15 times a month. She does not use a walker, wheelchair or shower stool. Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

(7) Claimant has a valid drivers' license and drives an automobile approximately eight times a month. Claimant is not computer literate.

- (8) The following medical reports are persuasive:

- (a) A [REDACTED] report was reviewed. The ophthalmologist provided the following background.

* * *

On examination on June 9, 2009, claimant has a corrected visual acuity of 20/20 in both eyes. She has some slight ptosis of the upper right lid on the external exam. The interior segment exam reveals some Christmas-tree-like refractile opacities in both eyes....

ASSESSMENT:

- (1) Mild tarmac muscular dystrophy with ophthalmic manifestations in the lens area of each eye.
- (2) Ptosis, right upper lid, greater than left upper lid.

* * *

- (b) A [REDACTED] narrative report was reviewed.

The ophthalmologist provided the following history present illness:

I had the pleasure of seeing claimant in the office today for a cardiovascular consultation. As you know, claimant is a 33-year-old white female with a history of myotonic dystrophy, who was referred to my office to be evaluated for cardiac involvement for myotonic dystrophy. Currently, she denies any symptoms of chest pain, shortness of breath, PMD, or orthopenia at this time. She has some weakness in her upper extremities. She denies any symptoms of syncope or presyncope. Her trial-EKG today revealed normal sinus rhythm, rate is 71 BPM with first degree AV block; otherwise, no acute ischemic changes noted.

* * *

- (c) A [REDACTED] progress note was reviewed.

The family physician provided the following diagnoses:

- (1) Myotonic dystrophy;
- (2) Wheezing;
- (3) Left ventricular hypokinesis.

* * *

- (d) In a [REDACTED] consultation report was reviewed.

The cardiologist provided the following history:

Claimant is 41 years old and has been diagnosed with myotonic dystrophy. She is being evaluated by [REDACTED] who performed a 12-lead EKG, and the 12-lead EKG was markedly abnormal. Interestingly, up to the time that claimant had the EKG; she never had any episodes of chest pain. However, last week before coming in for a visit, she had an episode of marked chest discomfort with a pressure sensation that lasted for approximately two hours. She has not had pain like that before and has not had any since.

The cardiologist provided the following impression:

Chest pain with a significantly abnormal EKG.

NOTE: Claimant's cardiologist did not state in his recent report that claimant is totally unable to work.

(9) Claimant alleges disability based on a mental impairment: inability to concentrate. Claimant did not provide any clinical psychological evidence of a mental impairment. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she has myotonic dystrophy, difficulty standing and sitting for long periods; difficulty bending, stooping, and kneeling, and chronic fatigue. Claimant's family physician provided a report (May 26, 2009) which provided the following assessment: (1) myotonic dystrophy; (2) wheezing; (3) left ventricular hypokinesis.

(11) There is no current probative medical evidence in the record to establish the claimant is totally unable to work based on her physical/exertional impairments.

(12) Claimant recently applied for SSI from the Social Security Administration. Social Security denied her applications. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled sedentary work.

The department evaluated claimant's impairments using all the SSI Listings at 20 CFR 404, Subpart P, Appendix.

The department denied claimant benefits based on Med-Voc Rule 201.27 and SHRT's determination that claimant is able to perform unskilled sedentary work.

LEGAL BASE

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by consideration of all factors in each particular case.

STEP #1

The issue at Step 1 is whether claimant is performing substantial gainful activity (SGA). If claimant is working and is earning substantial income, she is not disabled for MA-P/SDA purposes.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working or otherwise performing substantial gainful activity (SGA) are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The vocational evidence of record shows that claimant is not currently performing SGA. Therefore, claimant meets the Step 1 disability test.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Claimant must establish an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, the claimant meets the Step 2 disability test.

STEP #3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

However, SHRT evaluated claimant's impairments using all the SSI Listings at 20 CFR 404, Subpart P, Appendix. Claimant does not meet any of the applicable listings.

Therefore, claimant does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant last worked as a dishwasher at a truck stop. This was medium work.

The medical evidence of record establishes that claimant has difficulty bending, stooping, and kneeling. Also, she has difficulty standing and sitting for long periods.

Given the combination of claimant's physical impairments, she was no longer able to perform the lifting and standing required of a dishwasher.

Since claimant is unable to perform her previous work as a dishwasher, she meets the Step 4 disability test.

STEP #5

The issue at Step 5 is whether claimant has the residual functional capacity (RFC) to do other work. **Claimant has the burden of proof** to show by a preponderance of the medical evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges a disability based on a mental impairment: inability to focus and concentrate. Claimant did not provide any clinical reports, prepared by a psychiatrist/psychologist to establish a severe mental impairment. Also, claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on myotonic dystrophy, chronic fatigue, inability to stand/sit for long periods and inability to bend, stoop and kneel. A recent report by claimant's family doctor contains the following diagnoses: myotonic dystrophy, wheezing and left ventricular hypokinesis. Claimant's family physician did not state the claimant is totally unable to work.

In short, the Administrative Law Judge is not persuaded that claimant was totally unable to work based on her combination of impairments. Claimant performs a significant number of activities of daily living, has an active social life with her boyfriend and drives an automobile approximately eight times a month.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary work (SGA). In this capacity, she is able to work as a ticket taker for a theatre, as a parking lot attendant and as a greeter for [REDACTED]. Work of this type will afford claimant a sit-stand option at the workplace.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under Step 5 of the sequential analysis, as presented above.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does not meet the MA-P/SDA disability requirements under PEM 260/261.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby, AFFIRMED.

SO ORDERED.

/s/

Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 30, 2009

Date Mailed: November 2, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JWS/tg

cc:

