

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: 2009-14798
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 21, 2009
Saginaw 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, a in-person hearing was held in Saginaw on July 21, 2009. Claimant was confined to a skilled care nursing facility and was unable to attend the hearing. Claimant was represented by [REDACTED]

[REDACTED]

The department was represented by Edna Ticar (ES).

ISSUE

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

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 applicant (September 11, 2008) who was denied by SHRT (March 16, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests Retro-MA for September, October and November 2008.

(2) Claimant's vocational factors are: age—30; education—8th grade, post-high school education—GED; work experience—seasonal worker for a pickle factory.

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

- (a) Status post stroke;
- (b) Status post brain hemorrhage;
- (c) Hydrocephalus;
- (d) Status post brain tumor;
- (e) Statue post meningitis;
- (f) Status post 3 brain shunts;
- (g) Currently hospitalized at a skilled care nursing facility;
- (h) Currently unable to read or write due to recent multiple neurosurgeries.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 16, 2009)

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's disability using all the SSI Listings at 20CFR 404, Subpart P, Appendix. SHRT decided claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on 20 CFR 416.909 due to lack of severity and duration.

* * *

Claimant currently resides in a skilled nursing facility. Currently she is unable to read or write due to multiple neurosurgeries (shunt) placements.

Since September 2008, claimant has been treated for meningitis and hydrocephalus and has received 3 ventricular peritoneal shunts. Claimant has had repeated shunt surgeries because the procedures have not adequately controlled claimant's brain dysfunction.

ANALYSIS: The evidence in the file is inadequate to make a reasonable decision. SHRT requests that claimant have a complete physical examination in order to obtain additional medical evidence about claimant's ability to perform work functions.

(5) Claimant does not currently drive an automobile because she is hospitalized at a skilled care nursing facility.

(6) The following medical/psychological records are persuasive:

(a) An [REDACTED] Discharge Summary was reviewed.

The physician provided the following discharge diagnoses:

- (1) Gait disturbance;
- (2) Encephalopathy;
- (3) Multiple BP shunt placements and revisions;
- (4) Hydrocephalus.

The [REDACTED] physician provided the following history: claimant is a 29-year-old admitted to the [REDACTED] Hospital with headache. Work-up revealed BP shunt failure and on 4/3/2009, she was not noted to have bradycardia and was in B.TAC. She was unresponsive and emergent left external ventricular drain was placed, and since that time she has had multiple B.P. shunt placements and revisions, and over the last few days has remained stable. She was transferred to [REDACTED] for rehabilitation on [REDACTED].

HOSPITAL COURSE:

Claimant was admitted, and placed on a program of PT and OT and speech therapy. She has difficulty tolerating the therapy. She was able to ambulate short distances with a rolling walker and assistance, and with standby assistance with transfers. She did need assistance for self care.

* * *

CT scan was done and showed possible increase in hydrocephalus. She was transferred from skilled nursing care to [REDACTED] for reevaluation on [REDACTED].

* * *

(b) An [REDACTED] and Physical was reviewed. The [REDACTED] physician provided the following impressions:

- (1) Gait disturbance;
- (2) Status post multiple BP shunt placements and revisions;
- (3) Hydrocephalus.

(c) A December 4, 2008 Medical Examination Report (DHS-49) was reviewed. The [REDACTED] physician provided the following diagnoses:

Patient had been treated for chronic meningitis and transferred to [REDACTED] [REDACTED] for MRI findings of ventriculomegaly and communicating hydrocephalus.

The [REDACTED] physician provided the following work limitations: No work for 3 months.

(d) A [REDACTED] Note was reviewed.

The Henry Ford physician provided the following assessment:

20-year-old female with 4 month history of M/D/ABD PAN/HA/Associated with visual blurring, intermittent diarrhea, and amenorrhea, weight loss and generalized fatigue. Transferred from outside facility. CT scan of pelvis negative for mass lesion; treated for chronic meningitis, transferred to [REDACTED] secondary to MR finding of ventriculomegaly, and communicating hydrocephalus. EVD placed.

Claimant was admitted to [REDACTED] for further treatment.

(e) A [REDACTED] and Physical was reviewed.

The [REDACTED] physician provided the following history:

Chief Complaint: Nausea, vomiting and headaches since August 2008.

History of present illness: 29-year-old female with a 4 month history of M/P/ABD pain/headaches/associated with visual blurring, intermittent diarrhea, amenorrhea, weight less and generalized fatigue. Transferred from outside facility. CT scan of pelvis negative for mass lesion, treated for chronic meningitis, transferred to [REDACTED] secondary to MRI finding of ventriculomegaly and communicating hydrocephalus.

* * *

The [REDACTED] physician provided the following diagnoses: Meningitis, other; headache; nausea/vomiting; tachycardia; hypothyroidism. Other problems noted: Chronic meningitis, ventriculomegaly and communicating hydrocephalus.

OTHER NOTATIONS:

Patient's condition has a high probability for clinically significant or life/threatening deterioration and requires the highest level of physician preparedness to intervene urgently.

* * *

(7) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. There is no clinical evidence of a severe mental impairment in this record. Claimant did not provide a DHS-49D or a DHS-49E to show her mental residual functional capacity.

(8) The probative medical evidence does establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant has had 4 brain surgeries requiring claimant to be hospitalized at [REDACTED]. Claimant's surgeries have been problematical and have

impaired claimant's ability to read, write and walk. In [REDACTED], one of claimant's [REDACTED] [REDACTED] physicians stated that she would be incapacitated for 3 months. Claimant was unable to attend the hearing because she is still confined to a skilled care nursing facility and is unable to meet her activities of daily living on her own.

(9) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P for the following reasons:

I now have this shunt in my head for the rest of my life, and will have to continue to receive medical attention and doctor visits etc. I was in the [REDACTED] months, and received 4 surgeries to my head.

* * *

DEPARTMENT'S POSITION

The department explained its recent denial of claimant's application for MA-P benefits as follows:

Claimant was treated for Meningitis and then found to have hydrocephalus in 11/2008 and 12/2008. On 1/6/2009, claimant underwent placement of a right ventricular peritoneal shunt. On 2/19/2009, the shunt system was working nicely. She had good strength and tone in all legs. Her ambulation seemed somewhat healthy. There is no evidence of a brain tumor in the medical information file. Claimant's condition is expected to improve and not prevent all types of work for 12 months in a row.

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).

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 purposes. PEM 260. "Disability," as defined by MA-P standards is a legal term which is individually determined by a 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 eligible for MA-P.

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 medical/vocational evidence of record shows 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 a continuous period of 12 months and prevent all basic work activities. 20 CFR 416.909.

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

The severity/duration requirement is *de minimus* requirement; 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 alleges disability on Listing 11.04(b). The department evaluated all the applicable SSI Listings and determined that claimant does not meet the applicable Listings.

However, careful reading of the medical evidence in the record does show that claimant meets Listing 11.04.

Therefore, claimant meets the Step 3 disability test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a seasonal worker for a pickle factory. This was light work.

The medical records establish that claimant is currently incapacitated due to her meningitis, hydrocephalus and 3 unresolved, problematic brain shunts.

Also, claimant is currently residing in a skilled nursing care facility because she is unable to complete her activities of daily living on her own. Due to claimant's current hospitalization in a skilled nursing facility, she is unable to return to her previous work as a seasonal worker for a pickle factory.

Therefore, claimant 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 the medical evidence in the record, that her mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on meningitis, hydrocephalus, and 3 problematic brain shunt procedures. The physician's who have recently examined claimant report that claimant is unable to work at the present time due to the combination of claimant's impairments, she is currently not able to read or write. She is also unable to walk and stand normally. The combination of claimant's impairments precludes all employment at this time.

Based on the foregoing analysis, the department incorrectly denied claimant's MA-P application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant meets the MA-P disability requirements under PEM 260. Claimant is disabled for MA-P purposes.

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

The department shall open claimant's MA-P case, effective September 2008.

SO ORDERED.

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

Date Signed: March 5, 2010

Date Mailed: March 5, 2010

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 mailing 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/sd

cc:

