

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: 2009-17685
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 26, 2009
Arenac 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 August 26, 2009, in Standish. Claimant personally appeared and testified under oath.

The department was represented by Rich Joles (FIM).

ISSUE

Did the department establish significant mental/physical improvement in claimant's impairments to the extent that claimant is now able to perform Substantial Gainful Activity?

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 a current SDA recipient. Claimant has received SDA since May 2008. The basis for the SDA approval is not clear.

(2) On April 14, 2009 SHRT issued a State Hearing Review Team decision (DHS-282) stating that claimant was able to perform unskilled light work. SHRT denied ongoing SDA based on Med-Voc Rule 202.10.

(3) Claimant's vocational factors are: age--52; education--9th grade; post high school education--none; work experience--home help aide for her mom under the auspices of the Department of Human Services, deli assistant at [REDACTED] and cook at [REDACTED] restaurant.

(4) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when she was a home help aide for her mother.

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

- (a) Status post back surgery (May 2009);
- (b) Limited range of motion in her neck and arms;
- (c) Unable to do household chores;
- (d) Currently receiving physical therapy three times a week;
- (e) Recurring cervical cancer;
- (f) Degenerative disc disease.

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

OBJECTIVE MEDICAL EVIDENCE (April 4, 2009)

The department reviewed claimant's eligibility using SSI Listings at 20 CFR 404, Subpart P.

The department decided that claimant is able to perform unskilled light work.

The department denied claimant's application for a continuation of her SDA using Med-Voc Rule 202.10.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, light cleaning (sometimes), and grocery shopping (needs help). Claimant uses a walking stick on a daily basis. She wears a back brace approximately

20 times a month. Claimant received inpatient hospital services in 2008 when she received leg stents. Claimant received inpatient hospital care in 2009 when she received back surgery in May 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] narrative report was reviewed.

The consulting internist provided the following background:

Chief complaints: degenerative disc disease, peripheral arterial disease, cervical cancer and low back pain.

Claimant states she has a history of peripheral arterial disease. She has already had a FEM-FEM bypass in 2001. Then in May 2008, she had a stent placed. She gets two claudication problems.

* * *

She has smoked for 35 years, smoking one pack per day and quit smoking in May 2008. [Claimant currently smokes ten cigarettes per day].

Claimant also relates a history of low back pain. She states that it has been ongoing for a long time, but has been worse in the last five years. There is a radicular element to it. MRI in the past showed degenerative disc disease. She can walk about 96 steps, which is the distance to the mailbox, but when she comes back, she cannot lift her legs. She states that sitting and standing various periods she uses a cane when she is outside. She now states that her neck is hurting more than anything. She had a fusion to C5-C6 and C7 and states that the surgery did help. She also has some residual shoulder pain. Claimant states that her right arm cannot even carry a cup of coffee. She drops things. She had an EMG long ago. Her cervical spine does radiate down her arm. She is taking pain medication.

* * *

The consulting internist provided the following conclusions:

- (1) Peripheral artery disease.
- (2) Low back and neck pain.

Claimant has known degenerative disc disease and she is status post surgical fusion. I am most impressed by the diminished range of motion. There were no radicular elements seen on exam today. She had no difficulty doing orthopedic maneuvers. She walks with a normal gait without the use of an assistive device.

- (b) In May 2009, claimant had back surgery. She is currently receiving physical therapy as a part of her rehabilitation problems back surgery.

(8) Claimant reports that she needs almost daily help to complete her Activities of Daily Living and that she is experiencing chronic pain from her back dysfunction.

CONCLUSIONS OF LAW

LEGAL BASE

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).

THE ABILITY TO PERFORM SUBSTANTIAL GAINFUL ACTIVITY

Under current regulations, the **department has the burden of proof** to establish that claimant's mental/physical capacity has significantly improved to the point that claimant is now able to perform Substantial Gainful Activity (SGA).

The medical evidence of record shows that claimant's current diagnoses are (1) peripheral artery disease and (2) low back and neck pain.

There is no medical evidence in the record to show that claimant's peripheral artery disease has significantly improved for SDA purposes in 2008.

The medical evidence of record does not show significant improvement in claimant's low back and neck pain since she was approved for SDA in 2008.

Since the department has not established a significant improvement in claimant's combination of impairments, claimant is currently unable to perform Substantial Gainful Activity, and therefore, meets the requirements of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the SDA disability requirements under PEM 261.

Accordingly, the department's denial of claimant's January 2009 review application is, hereby, REVERSED.

The department will provide claimant with a recent physical examination in August 2010, to determine her ability to perform Substantial Gainful Activity.

SO ORDERED.

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

Date Signed: March 29, 2010

Date Mailed: March 30, 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 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:

