

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: 2009-20524

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 24, 2009

St. Clair 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 telephone hearing was held on June 24, 2009, in Port Huron. Claimant personally appeared and testified under oath.

The department was represented by Leonard Garza (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

(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 (September 25, 2008) who was denied by SHRT (May 11, 2009) based on claimant's ability to perform sedentary, light and medium work. SHRT relied on Med-Voc Rules 201.16, 202.14 and 203.22 as a guide. Claimant requests retro MA for June, July and August 2008.

(2) Claimant's vocational factors are: age--50; education--high school diploma, post-high school education--has a degree from a business college and obtained a nurse's aide certificate in 2000; work experience--an insurance agent for [REDACTED] and a home help aide.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since March 2008, when she worked as an insurance agent at Aflak.

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

- (a) Poor memory;
- (b) Multiple sclerosis;
- (c) Chronic neck/back pain;
- (d) Sleep dysfunction;
- (e) Sore feet;
- (f) Hands go numb;
- (g) Carpal tunnel syndrome;
- (h) Hard to pick up items;
- (i) Blurred eyesight;
- (j) Status-post breast surgery;
- (k) Loses train of thought;
- (l) Hot flashes;
- (m) Asthma.

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

OBJECTIVE MEDICAL EVIDENCE (May 11, 2009)

SHRT decided that claimant was able to perform sedentary, light and medium work. SHRT evaluated claimant's impairments using SSI Listings 1.01, 3.01, and 4.01. SHRT decided that claimant does not meet any of the applicable SSI listings. SHRT denied disability based on 20 CFR 416.967c based on claimant's ability to perform medium work.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing (sometimes), light cleaning (sometimes), vacuuming (sometimes), laundry and grocery shopping. Claimant uses a cane approximately three days a month. She does not use a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

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

(8) The following medical records are persuasive:

(a) A September 29, 2008 physical examination report was reviewed. The physician provided the following background:

Claimant is here for paperwork filled out and for refills of medication. She has an underlying history of multiple sclerosis, asthma. No gait disturbances noted. She has an underlying allergy history. No significant nausea or vomiting. She does claim significant multiple arthralgias. Claimant is a non-smoker. She denied any significant ethanol or substance abuse. Medicaid forms were filled out today. Influenza vaccination was offered to the patient but she refused.

The physician provided the following assessment:

- (a) Asthma--stable;
- (b) Arthralgias;
- (c) Multiple sclerosis;
- (d) Migraine headaches--stable.

* * *

(b) A September 26, 2008 psychiatry report was reviewed.

The physiatrist provided the following:

I had the opportunity to see claimant for re-check regarding neck and low back pain. Since the last visit, I did obtain the MRI of the brain with no specific findings. I have the upper and lower EMG consistent with moderate right carpal tunnel syndrome and minimal left ulnar neuropathy at elbow and negative for cervical and lumbar radiculopathy.

At this time, she reports discomfort in the neck and low back, with radiation into her legs. She did see [REDACTED] and I would defer neurogenic pain meds to her.

* * *

- (c) A July 18, 2008 psychiatry report was reviewed.

The physiatrist provided the following background:

I had an opportunity to see claimant for a comprehensive re-check. Claimant is known to me with neck and low back pain. She is a 50-year-old right-handed black female living in a second-floor apartment. She doesn't smoke or drink or work. She last worked perhaps in 2002 as a nurse's aide. Review of symptoms is positive for hypertension, reflux, hiatal hernia, migraine, neck and back pain, trigger finger, arthritis (especially shoulders) and cholesterol.

* * *

A review of my chart shows EMG by [REDACTED] with moderate right carpal tunnel syndrome. Dr. S. previously demonstrated left carpal tunnel syndrome with mild to moderate severity.

* * *

The C-spine MRI showed C5,6 disc disease and lumbar annular tear. The left shoulder demonstrates moderate supraspinatous tendinitis. Previous pelvic study demonstrated ovarian cyst, but no definite endometriosis.

* * *

(9) Claimant does not allege a mental impairment as the basis for her disability. There are no psychiatric reports in the record. Claimant did not provide a DHS-49D or a 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 MS, poor memory, neck/back pain, sleep dysfunction, sore feet, numbness of the hands, blurred vision, carpal tunnel and status-post breast surgery. A recent physiatry report states that claimant is positive for hypertension, reflux, hiatal hernia, migraine, neck and back pain, trigger finger, arthritis and cholesterol. The physician did not state that claimant was totally unable to work.

(11) 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/SDA based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform a wide range of unskilled sedentary, light and medium work. The department denied disability benefits based on Med-Voc Rule 201.16, 202.14 and 203.22.

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 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 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 the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *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 does not allege disability based on the Listings.

However, SHRT evaluated claimant's eligibility based on SSI Listings 1.01, 3.01 and 4.01. 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 an insurance salesman for [REDACTED]. This was sedentary work.

The medical evidence of record establishes that claimant has several physical impairments including asthma, hypertension, acid reflux, cervical disc herniation and multiple sclerosis. However, the medical evidence of record does not establish that claimant is totally unable to return to her previous sedentary work as an insurance salesman.

Therefore, claimant does not meet 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 does not allege disability based on a mental impairment. Also, claimant did not provide a clinical evaluation of her mental status. Finally, claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on MS, low back pain, asthma, hypertension, acid reflux and back dysfunction. Although claimant is precluded from heavy lifting and constant standing, the medical evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to her return to work was her back, shoulder, leg and foot pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about her pain is profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is 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 neighbors, and drives an automobile approximately four times a month. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes 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]. This type of work would afford claimant a sit-stand option.

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: September 24, 2009

Date Mailed: September 25, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/cv

cc:

A large black rectangular redaction box covering several lines of text in the distribution list.