

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: 2009-20539
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 23, 2009
Newaygo 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 in White Cloud on July 23, 2009. Claimant personally appeared and testified under oath.

The department was represented by Kimberly S. Polasek (Lead ES worker), and Martha Sherman (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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 applicant (December 3, 2008) who was denied by SHRT (May 11, 2009) due to claimant's ability to perform a wide range of light work. SHRT relied on Med-Voc Rule 202.10 and 202.13 as a guide.

(2) Claimant's vocational factors are: age—52; education—9th grade; post-high school education—GED and a certification as a nurse assistant; work experience—stocker at [REDACTED], factory worker, certified nurse assistant at a nursing home, truck driver and retail sales assistant for [REDACTED] markets.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when she worked as a stocker at [REDACTED]

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

- (a) Status post open heart surgery (November 2008);
- (b) Memory dysfunction;
- (c) GERD;
- (d) Stomach ulcer.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 11, 2009)

SHRT decided that claimant was able to perform a wide range of unskilled light work. SHRT evaluated claimant's disability using all the SSI Listing in 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 Rules 202.10 and 202.13 using claimant's ability to perform a wide range of unskilled light work.

(6) Claimant lives with her daughter and performs the following Activities of Daily Living (ADLs): dressing, bathing, dishwashing, light cleaning, mopping (sometimes), vacuuming and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant received inpatient hospital services in November 2008 when she underwent open heart surgery. She did not receive inpatient hospital services in 2009.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is not computer literate. Claimant has 2 grandchildren who live near her; she sees them on a regular basis.

(8) The following medical records are persuasive:

- (a) An [REDACTED] narrative report was reviewed.

The physician provided the following history:

I had the pleasure of seeing of seeing claimant today for routine follow-up after her coronary bypass grafting surgery in November 2008. She has normal left ventricular function and has no anginal symptoms. She still has pains related to her incision, but she thinks they are musculoskeletal, which I would agree with. Her main problem is she has been troubled by memory loss and is being evaluated. She tells me she had a MRI and is going to have some formal cognitive testing done.

The physician provided the following summary:

In summary, claimant is a 52 year-old woman with 3-vessel coronary artery disease status post bypass grafting surgery in November 28, with preserved LV function. She has no signs or symptoms of angina or congestive heart failure. I am uncertain of the etiology of her memory problems and will await your work-up. Otherwise, I think she is on appropriate medical therapy. Her last LDL cholesterol was improved, although suboptimal at 109.

* * *

(b) A [REDACTED] was reviewed.

The surgical nurse provided the following discharge diagnosis:

- (1) Acute coronary syndrome;
- (2) Hypertension;
- (3) History of hiatal hernia;
- (4) Severe coronary artery disease;
- (5) History of tobacco abuse;
- (6) Obesity.
- (7) Hyperlipidemia.

(9) Claimant alleges disability based on a mental impairment: memory dysfunction.

There are no probative psychiatric/psychological reports in the record. Claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity. At this time, there is no reliable medical evidence to establish a severe disabling mental condition that totally precludes all work activities.

(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. The medical reports do establish the following diagnoses: acute coronary syndrome, hypertension, history of a hiatal hernia, severe coronary artery disease, history of tobacco abuse, obesity and hyperlipidemia. The cardiologist who submitted a report (April 10, 2009) did not state that claimant is totally unable to work. Claimant does have a reduced ability to lift heavy weights and to stand for an entire 8 hour shift. At this time, however, there is no reliable evidence to establish a severe disabling physical condition that totally precludes all work activities.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Her application is still pending with Social Security.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform a wide range unskilled light work.

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

Based on claimant's vocational profile [closely approaching advance age (age 52), with a GED education and a history of unskilled work], the department denied MA-P based on Med-Voc Rules 202.13 and 202.10 as a guide.

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 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.

Unless an impairment is existed to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 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).

Since 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 does not allege disability based on the Listings. However, SHRT evaluated claimant's eligibility based on all the Listings at 20 CFR 404, Subpart P, Appendix. SHRT determined that 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 previously worked as a stocker for [REDACTED]. Claimant's work at [REDACTED] was light work.

None of the medical sources who provided medical evidence reported that claimant is unable to work in her previous position as a stocker for [REDACTED].

Since claimant is able to return to her previous work, 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 the medical evidence in the record, that her impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on a mental disorder: short term memory dysfunction. There is no psychological/psychiatric evidence in this record to establish a severe mental impairment. Also, claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on physical impairment: status post open heart surgery, GERD and an ulcer. The medical evidence of record provided by the [REDACTED]

██████████ indicates that claimant's coronary bypass grafting surgery in November 2008 was successful. The only residual reported by claimant is pains related to her incision. The cardiologist did not state that claimant's heart condition precludes all work activity. There is no information on the status of claimant's GERD or on the status of her ulcer. While it is clear that claimant's mental impairment does prevent her from performing complicated work, her physical impairments, at this time, do not preclude sedentary employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Claimant currently performs many Activities of Daily Living, has an active social life with her daughter and is able to drive an automobile. 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, claimant is able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter for ██████████.

Based on this analysis, the department correctly denied claimant's MA-P application, based on 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 disability requirements under PEM 260.

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

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 8, 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:

