

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: 2009-20762
Issue No: 2009-4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 17, 2009
Branch 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 November 17, 2009, in Coldwater. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Jamie Bauerly (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 December 7, 2009. Claimant waived the timeliness so that her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P) and 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) and 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 (December 1, 2008) who was denied by SHRT (May 15, 2009) based on claimant's ability to perform her past work. Claimant requests retro MA for September, October and November 2008. The disputed disability period is September 2008 through December 17, 2009.

(2) Claimant's vocational factors are: age--55; education--7th; post high school education--none; work experience--assembly line worker for [REDACTED], deli worker for [REDACTED] and home health worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when she worked as an assembly line worker for [REDACTED].

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

- (a) Back dysfunction;
- (b) Inability to sit or stand for long periods;
- (c) Bilateral knee dysfunction;
- (d) Bilateral knee pain;
- (e) Tremor in hands;
- (f) Carpal tunnel dysfunction; and
- (g) Status post left carpal tunnel surgery.

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

OBJECTIVE MEDICAL EVIDENCE (May 15, 2009)

SHRT decided that claimant was able to perform her past work (machine operator-sedentary work). SHRT evaluated claimant's impairments using SSI Listing 1.01. SHRT decided that claimant

does not meet any of the applicable SSI Listings. SHRT denied disability based on claimant's ability to perform her prior unskilled sedentary work.

(6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), light cleaning (sometimes), laundry (sometimes), and grocery shopping (needs help). Claimant uses a cane approximately 30 times a month. Claimant uses a shower stool approximately 15 times a month. Claimant does not use a walker or wheelchair. Claimant does not wear braces. Claimant was hospitalized in 2008 for back surgery. She had outpatient knee surgery in 2009.

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

(8) The following medical records are persuasive:

(a) A May 8, 2009 residual functional capacity assessment was reviewed. The consulting physician provided the following primary diagnoses:

The consulting physician provided the following exertional limitations: Claimant is able to occasionally lift 20 pounds. She is able to frequently lift less than 10 pounds. She is able to stand or walk for about six hours in an eight-hour day. She is able to sit with normal breaks for six hours in an eight-hour day. She is able to push-pull and operates hand/foot controls for an unlimited period.

The physician noted the following postural limitations:

Claimant may climb stairs occasionally; perform balancing, stooping, kneeling, crouching and crawling occasionally. She is not able to climb ladders, ropes or scaffolds. Claimant has no manipulative limitations. She has no visual limitations. She has no communicative limitations. She has no environmental limitations.

The physician provided the following summary:

Claimant appears in mild discomfort, good effort. 136/64, 198 pounds, 61 inches. Eight-inch incision over DL spine, femoral/popliteal/dorsal pedis/posterior tibial pulses decreased bilaterally. Hair growth absent on lower extremity. Feet warm/normal color. No femoral bruits, synovial thickening knees bilaterally with crepitance over patellar joints bilaterally, tenderness over medial tibial plateau bilaterally, grip decreased bilaterally, dexterity okay, Heberden's nodes present in hands, could pick up coins, buttons, open door; mild difficulty on and off table, mild difficulty heel-toe walking, moderate difficulty partial squat, couldn't hop, LS straightening, SLR negative. Paravertebral hypertrophy. ROM decreased, dorsolumbar spine, decreased knee flexion, Strength/tone normal, sensory intact, walks with small steps, wide based gait without HHAD, findings of moderate arthritis, assistive device would be helpful for pain control when walking over 100 yards, benign resting tremor, very subtle shake in right arm today but no difficulty with manipulative tasks. Some synovial thickening in her wrists but no findings of CTS.

* * *

- (b) An April 23, 2009 orthopedic surgery report was reviewed.

The orthopedic surgery provides the following background:

Degenerative arthritis. Date of surgery: August 13, 2008, consisting of posterior decompression, instrumentation, and fusion L1 to L3. Prior surgery September 5, 2003, consisting of posterior decompression, fusion, instrumentation L3 to S1.

* * *

Clinical impression:

Claimant is involved in a manual labor type activity, and I really do not see her being able to go back to that type of lifestyle or job activity in the future. She needs to be likely permanently disabled from that type of activity.

Sedentary type job activity, she certainly could consider doing. Right now, the job prospects are poor, and she is not working.

* * *

- (c) On [REDACTED] physical examination report was reviewed. The internist provided the following background:

Chief complaints: Back, knees, tremor, shakiness.

Claimant has a history of degenerative arthritis to her knees and back. She attributes this to a motor vehicle accident she sustained in 1999. She underwent a lumbar spine fusion in 2003 by [REDACTED] and then had a spinal leak that had to be surgically repaired in 2008. She is not undergoing any therapy now for her back other than some range of motion exercises. She does use a cane on occasion, when she is out in public or is not in an area where she can hold onto a wall. In regards to her knees, she has had injection treatments as well as arthroscopic interventions to both knees. She has been told she has advanced disease and cartilage damage. She has been told she will need a total knee arthroplasties at some point.

* * *

Claimant has not worked since 2003. She used to work Corradi's doing factory work. She states she stopped work at that time because the company went out of business. She now lives with her stepmother in a home. She can do her activities of daily living and household chores, but does do some light dishes and laundry. She will occasionally cry. She does cook microwave dinners. She otherwise plays with her grandchildren, does occasional crafts, and plays on the computer. She states she can sit about 30 minutes, stand about 45 minutes, and states she can walk around [REDACTED] if she hangs on to a cart. She cannot lift anything greater than ten pounds.

SOCIAL HISTORY: Tobacco, smoked for 43 years, currently ½ a pack per day.

* * *

The consulting internist provided the following conclusions:

(1) Arthritis:

Claimant does have findings of moderate disease today. Per review of the chart she has had imaging studies which did show chondromalacia which did coincide with her findings today. There was no laxity but she did have diminished range of motion. She most likely will require total knee arthroplasties in the future but is not essential at this point. In regards to her back, she does have some post surgical, post traumatic arthritis and paravertebral hypertrophy.

* * *

Please note the claimant does have a benign resting tremor. She did have a very subtle shake in the right arm today but had no difficulty doing manipulative tasks. Her grip strength was preserved. She did have some synovial thickening in her wrists but no findings of carpal tunnel disease today. This does appear relatively stable.

* * *

(9) Claimant does not allege a severe mental impairment as a basis of her disability.

She did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity.

(10) The claimant alleges back and knee dysfunction as well as a tremor and shakiness.

The orthopedic surgeon, who provided a report dated April 23, 2009, states that claimant is able to perform sedentary work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social

Security Administration. Claimant's application was denied. She did not 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 her prior unskilled sedentary work as a machine operator.

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 does 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 earning substantial income, she is not eligible 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 12 months, and/or 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 the 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 SSI Listing 1.01. SHRT decided that claimant does not meet any of the applicable SSI 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 an assembly line worker in auto parts. This was sedentary/light work.

The medical evidence of record establishes that claimant has bilateral knee dysfunction and is unable to stand for long periods of time.

Since claimant is no longer able to stand for a continuous eight-hour shift, she is unable to return to her work as an assembly line worker.

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 the preponderance of the 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.

Second, claimant alleges disability based on back dysfunction, bilateral leg dysfunction and a tremor. Claimant has had several back surgeries. Her orthopedic surgeon states that she is able to perform to sedentary work.

Third, claimant testified that a major impediment to return to work was her back pain and her bilateral knee 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 combined impairments. Claimant performs an extensive number of activities of daily living, has an active social life with her roommate/friend and enjoys playing games on the computer.

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

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/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: May 17, 2010

Date Mailed: May 18, 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:

