

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: 2009-21362
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 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, an in-person hearing was held on October 28, 2009 in Port Huron. Claimant personally appeared and testified under oath.

The department was represented by Kris Rutowski (FIM).

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 the 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/SDA applicant (November 7, 2008) who was denied by SHRT (May 21, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc 202.20 as a guide. The Record closed on October 28, 2009 and the disputed eligibility period is November 7, 2008 to October 28, 2009.

(2) Claimant's vocational factors are: age--48; education--high school diploma; post high school education--none; work experience--provided child care for her grandchildren under the auspices of the Department of Human Services, production worker for a factory and production worker at a factory.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since June 2009 when she was employed by the department as a child care provider for her grandchildren.

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

- (a) Blood disorder;
- (b) Arthritis in hands and legs;
- (c) Chronic obstructive pulmonary disease (COPD);
- (d) Allergies;
- (e) Diabetes;
- (f) Depression; and
- (g) Circulatory problems.

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

OBJECTIVE MEDICAL EVIDENCE (May 21, 2009)

Claimant has a history of aortofemoral bypass graft with subsequent right limb thrombosis. She underwent thrombectomy of the right limb and a femoral-femoral bypass graft. She had a vena caval filter placed (page 101).

Claimant underwent gastric sleeve surgery in 3/2008 (page 122). In 2/08, the claimant was 5'2" and 290 pounds with a body mass index (BMI) of 53 (page 78).

The claimant also has a history of Idiopathic thrombocytopenia purpura and was treated with intravenous immunoglobulin and Rituxan. In 7/08, her platelet count was 176,000 (page 132).

On 12/04/2008, the claimant's platelet count was only 19 (age 139). On December 8, it was up to 52 (page 138) and on 12/17/08, it was up to 111 (page 137).

In 1/09, the claimant was 61" and 247 pounds. The claimant's examination was basically unremarkable (pages 117-119).

ANALYSIS:

Claimant has a history of thrombosis and thrombocytopenia. Her platelet count does respond to treatment when it gets low. The claimant is 247 pounds but her examination was otherwise unremarkable.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning (sometimes), laundry (sometimes), grocery shopping (needs help) and rides the [REDACTED] electric cart. Claimant uses a cane approximately twice a month. She does not use a walker or wheelchair. She uses a shower stool 30 times a month. Claimant wears braces on both knees approximately 20 times a month. Claimant received in-patient hospital care in 2008, on five separate occasions for her blood disorder/circulatory problems. She was not hospitalized in 2009.

(7) Claimant has a valid driver's license but does not drive. Claimant is not computer literate.

(8) The following medical records are persuasive:

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

The internist provided the following background:

Chief Complaints: diabetes, asthma, ITP, aortic bypass and Glaucoma.

Claimant states that she was diagnosed with diabetes about ten years ago. She is currently being treated with Actos

and insulin. She denies any complications related to diabetes.

Claimant also relates a history of asthma since 1991. She states that at that time she was working in a factory and was exposed to chemicals. She states that the chemicals were exacerbating her asthma and she was told she must change to a different job. She subsequently stopped working in the factory in 1996 due to breathing related difficulties.

She states that she does baby sit her grandchildren but she has to do so only at night because she cannot tolerate chasing them around during the day. She states that her grandchildren are ages 2 and 5 and she will get short of breath when attempting to chase them around the room. She states that she is able to do light household chores but avoids anything that requires dusting or sweeping; this exacerbates her breathing related difficulties. She does use nebulized DuoNeb QID. She has not had any hospitalizations or emergency room visits for breathing related difficulties.

The patient relates that she has a history of having had an aortic bypass several years ago. She states subsequently she has developed ITP and has had several hospitalizations for clots and IVIG as well as receiving intravenous Rituxan for low platelets. She is currently being treated with Prednisone 20 mg daily due to her chronic low platelet count.

* * *

The internist provided the following conclusions:

- (1) Asthma: Her lung exam today is essentially unremarkable. Her asthma does tend to be related to exposure of chemicals and dust.
- (2) Diabetes: She does not have any complications related to her diabetes.
- (3) Aortic bypass: She has had subsequent ITP. She has received IVIG as well as Rituxan in an attempt to keep her platelets at a normal level.

(9) Claimant alleges disability based on a mental impairment: depression. Claimant did not provide any clinical reports (by a psychiatrist or Ph.D. psychologist to establish her mental status. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

(10) The claimant alleges disability based on a combination of physical impairments: Blood disorder, arthritis in hands and legs, (COPD), allergies, and diabetes. A recent consulting internal medicine report (January 27, 2009) provides the following diagnoses: Asthma, diabetes and aortic bypass. The consulting internist did not state that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits (SSI) 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 benefits 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 unskilled light work.

The department evaluated claimant's impairments using the SSI Listings. The claimant does not meet any of the SSI listings.

The department denied claimant's request for disability based on Med-Voc Rule 202.20 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).

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).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that a disability exists for purposes of the MA-P/SDA program. 20 CFR 416.927(e).

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, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Using the *de minimus* standard, claimant meets the Step 2 eligibility 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 eligibility based on the SSI Listings. SHRT decided that claimant does not meet any of the applicable SSI Listings.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant last worked as a day care provider for her grandchildren under the auspices of the department. This was light/medium work.

The medical evidence of record establishes that claimant has a blood disorder, diabetes, chronic obstructive pulmonary disease and circulation problems. Because of claimant's COPD, she is unable to stand on her feet and lift small children, as required of a day care provider.

Since claimant is unable to perform the lifting and the standing required of a day care provider, she is not able to return to her previous work. For this reason, 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 combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on mental impairment: depression. Claimant did not submit any clinical evidence (provided by a psychiatrist or a Ph.D. psychologist) to establish her mental status). In addition, claimant failed to provide a DHS-49D and a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments, which are listed above. Claimant continues to have a breathing disorder associated with her allergies. In addition she has COPD. For this reason, she is precluded from performing

repetitive heavy lifting. Although claimant does have impairments based on her blood disorder and her chronic obstructive pulmonary disease, she is not precluded from performing sedentary work.

Third, claimant testified that a major impediment to her return to work is the arthritis pain she experiences in her bilateral hands and legs. 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 a significant number of activities of daily living and has an active social life with her children and other relatives.

Based on evidence in the record, as well as claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple 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.

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: May 7, 2010

Date Mailed: May 10, 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

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