

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: 2009-21909
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 21, 2009
Saginaw 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 in Saginaw on July 21, 2009. Claimant personally appeared and testified under oath.

Claimant was represented at the hearing by [REDACTED].

The department was represented by Cheryl Kubczak (ES).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on July 27, 2009. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge issued the decision below.

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/Retro applicant (October 28, 2008) who was denied by SHRT (May 15, 2009) due to claimant's ability to perform a wide range of sedentary work. SHRT relied on Med-Voc Rule 201.21 as a guide. Claimant requests Retro-MA for July, August and September 2008.

(2) Claimant's vocational factors are: age—49; [REDACTED]—high school diploma, post-high school education—none; work experience—line worker at [REDACTED], shift manager, cook and customer service assistant at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006, when she worked as a shift manager, cook and customer service representative for [REDACTED].

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

- (a) Poor vision in both eyes;
- (b) Hypertension;
- (c) Arthritis in left leg;
- (d) Status post left leg fracture.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 15, 2009)

Claimant sustained a left fractured ankle on 7/2008. X-rays confirmed the fracture. (Pages 35-36). Her treating doctor noted on 10/2008, she is ambulating with crutches and has a cast on her leg. (Page 9). She has right eye blindness and vision in the left eye is normal. (Page 9). Her blood pressure reading was uncontrolled with no organ damage. Claimant alleged sleep disorder; however her doctor did not mention it on his report.

ANALYSIS:

Currently, claimant is limited to sedentary work. Claimant's doctor stated her condition is not expected to last more than 12 months. (Page 9). We expect her to be able to return to her past work after her fracture heals.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, mopping (needs help), vacuuming (needs help), laundry (need help) and grocery shopping (needs help). Claimant uses a cane on a daily basis. She does not use a walker or a wheelchair. Claimant uses a shower stool on a daily basis. She does not wear braces. Claimant received inpatient hospital care for her broken leg in July 2008. Claimant did not receive any inpatient hospital care in 2009.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A July 14, 2009 Medical Examination Report (DHS-49) was reviewed.

The family practice doctor provided the following diagnosis: status post left tibial fracture, hypertension, right eye blindness; GERD; insomnia and pancreatitis.

The family practice physician reported the following limitations: Claimant is able to lift less than 10 pounds occasionally. She is able to stand/walk less than 2 hours and sit 6 hours. She has normal use of her arms and legs and normal use of her right leg. No mental impairments were reported. The family practice physician did not state that claimant is totally unable to work.

(b) A March 11, 2009 Medical Examination Report (DHS-49) was reviewed.

The family practice physician provided the following diagnoses: status post left tibia fracture; hypertension; right eye blind, GERD, right eye conjunctivitis, insomnia.

The family practice physician reported claimant is able to lift 10 pounds occasionally. She is able to stand/walk less than 2 hours in an 8 hour day and sit about 6 hours in an 8 hour day. She has normal use of her hands/arms, and can use her right leg normally.

(9) There is no probative medical evidence to establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant does not allege disability based on a mental impairment. 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. The family practice physician reported the following diagnoses: Status post left tibia fracture, hypertension, right eye blindness, GERD, right eye conjunctivitis, insomnia. The family practice physician did not state that claimant is 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 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 medium work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department thinks the medical evidence of record shows claimant retains the capacity to perform a wide range of sedentary work. The department denied MA-P disability based on claimant's vocational profile [younger individual (age 49), high school graduate and a history of unskilled work]. The department denied MA-P based on Med-Voc Rule 201.21 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/vocational 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, and prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P claimant must satisfy both the gainful work and the severity and duration requirements. 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 a Listing.

However, SHRT evaluated claimant's eligibility using applicable SSI Listings. Claimant does not meet the requirements of any Listing.

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 previously worked as an assembly line worker for Delphi. This work was medium work.

The medical evidence of record shows that claimant has very poor vision. In addition, claimant has status post left leg fracture, hypertension and GERD.

The combination of claimant's poor vision and left leg fracture make it difficult for claimant to perform the continuous standing required of assembly line work.

Therefore, claimant is unable to perform her previous work.

Claimant 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 purposes.

First, claimant does not allege disability based on a mental impairment. There is no psychological/psychiatric evidence in the record to establish a severe mental impairment. Claimant did not submit a DHS-49D or a DHS-49E to show her mental residual functional capacity.

Second, claimant alleges disability based on poor vision, GERD, hypertension and status post left leg fracture. These impairments are verified by the medical evidence in the record. However, the family practitioner who reported on claimant's physical condition, states that claimant is able to lift up to 10 pounds occasionally and can stand/walk less than 2 hours in an 8 hour day, and sit about 6 hours in an 8 hour day. She has normal use of her hands, legs and arms and normal use of her right leg. The family practitioner who submitted a report did not state that claimant was totally unable to work.

During the hearing, claimant testified that a major impediment to her return to work was poor vision in both eyes. Unfortunately, evidence of poor vision, alone, is insufficient to establish disability for MA-P purposes. There are many jobs available in the national economy which can be performed by persons who have significant vision impairments. Some state buildings have concessions which are operated by people with profound visual impairments.

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 friend and is able to meet most of her activities of daily living with the assistance of a friend who stops by several times a week. While it is true that claimant is unable to stand for long periods and unable to drive an automobile, she does have the capacity to work as a ticket taker at a theatre and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P application, based on Step 5 of the sequential analysis, as presented above.

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, she is physically able to work as a ticket taker at a carnival, as a parking lot attendant, and as a greeter at [REDACTED].

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 mailing date of the rehearing decision.

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