

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: 2009-25551
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 30, 2009
Livingston 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 July 30, 2009 in Howell. Claimant personally appeared and testified under oath.

The department was represented by Mark Viroff (FIS).

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 (February 11, 2009) who was denied by SHRT (June 24, 2009) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.21 as a guide. Claimant requests retro-MA for November and December 2008, also January 2009.

(2) Claimant's vocational factors are: age—52; education—high school diploma, post-high school education—3 semesters at [REDACTED] (Liberal Arts major); work experience—nurse aide.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004 when she was a nurse aide.

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

- (a) Chronic face pain;
- (b) Chronic eye, cheek, head and tongue pain;
- (c) Status post 3 brain surgeries;
- (d) Takes psychotropic meds;
- (e) Decreased ability to focus;
- (f) Decreased short term memory;
- (g) Unable to wash face;
- (h) Sleep dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 24, 2009)

SHRT decided that claimant was able to perform unskilled medium. SHRT evaluated claimant's impairments using SSI Listing 11.21 and 12.01. SHRT decided claimant does not meet any of the applicable Listings. SHRT denied disability based on 20 CFR 416.967(c) and Med-Voc Rule 203.21.

(6) Claimant lives with her 3 grown sons, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning (sometimes), mopping (sometimes), vacuuming, laundry (sometimes), and grocery shopping (sometimes).

Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces. Claimant has not received inpatient hospital treatment in 2008 or 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately 8 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

An [REDACTED] Psychiatric Evaluation was reviewed.

(a) the psychiatrist provided the following history:

Complaints and Symptoms: This is a 52 year-old white female divorced and unemployed who came to the interview alone and presented her chief complaints as "I suffer from pain, so called trigeminal neuralgia, on the right side of my face since 1987." Patient went on to describe the onset of her illness and it dates back to 1987 and then her condition has progressively gotten worse and that she underwent 3 surgical operations.

* * *

She stated as she was carrying laundry downstairs, she fell and experience progressive weakness of the body, legs and arms. She became mute and could not talk. Claimant stated along with her neurological illness she has been experiencing severe depression, chronic feeling of hopelessness and that she started seeing a counselor right after the onset of her neurological illness.

* * *

Claimant stated she continues to suffer from severe insomnia; particularly middle insomnia. She stated "I don't know how it is to have full-time sleep." Claimant stated repeated shooting pain awakens her at night and with a great deal of difficulty, remains awake for a period of 2 to 3 hours and then falls asleep for one hour. Her ? has been suppressed partly due to provoking pain as she chews food. She stated shooting pain in her jaw would be induced by chewing; therefore has been losing appetite and has lost a significant amount of body weight as she indicated 85 pounds lost in the past one and one-half years. Her prior weight was 228, at present time 115 pounds.

* * *

Employment History:

Claimant stated the last employment was at the [REDACTED] [REDACTED] for a period of one year. Prior to that, she had worked at [REDACTED] as a sales assistant for a period of 2 years. She also had worked at [REDACTED] for part-time, a few years. Patient's longest period of employment was at [REDACTED]. Five years straight. It should be mentioned that claimant failed to convey each occasion of employment and date of coincidence. She claimed she has had difficulty remembering complex information. Claimant had worked at [REDACTED] as a collection clerk for a period of 3 years; prior to that she worked at [REDACTED], processing claims for 3 years. She had worked as a nurse's aide at [REDACTED] and worked part-time in the evening when her children were growing.

* * *

III Daily Functioning:

Social Functioning: Claimant currently lives with her sister in [REDACTED]. She has another sister and stated she had close ties to them, both sisters. They go to visit her mother in a [REDACTED] at [REDACTED] many times a week. Claimant stated she has 4 good friends and has had good association with church as she continues to be involved even in volunteering working one day a week for a period of 2 hours. Claimant claims she enjoys being among people and to get out of the house even driving around. Claimant has been attending [REDACTED] on Wednesday's and most of the religious services. Claimant claimed during her employment she always followed the chain of command.

* * *

The psychiatrist provided the following diagnoses:

Axis I—Mood disorder depression due to general medical condition diagnosed on Axis III; Axis V/GAF—45.

* * *

- (b) A February 6, 2009 Medical Examination Report (DHS-49) was reviewed. The surgeon provided the following diagnosis:

Chronic facial pain due to trigeminal neuralgia.

The surgeon provided the following limitations:

Claimant is able to lift less than 10 pounds frequently. She is able to stand/walk less than 2 hours in an 8 hour day. She is able to sit less than 6 hours in an 8 hour day. She is able to use her hands/arms for simple grasping. Not able to use her hands/arms for reaching, pushing-pulling or fine manipulating. Claimant is not able to use her feet/legs to operate foot controls.

- (b) A [REDACTED] was reviewed. The surgeon provided the following information:

Claimant has been under my care for treatment of her severe debilitating chronic facial pain for the past year. In addition, I have treated her extensively in the past as well. Claimant suffers from severe atypical trigeminal neuralgia. Her pain has proven to be exceptionally difficult to manage. She has undergone multiple surgical procedures and has been tested on trials of numerous medications, the end goal of all of which are to minimize her pain and discomfort.

At the present time, her pain is at a severe enough level to fully interfere with all activities of daily living. She is homebound at this point. She is able to carry out activities of daily living as it pertains to self care. She is able to maintain her personal space as well as to attend to meals and caring for herself. While she does not require constant onsite nursing or skilled care, she is otherwise entirely debilitated and unable to work at either in full or part time capacity.

* * *

- (9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not allege disability based on a mental impairment.

The consulting psychiatrist provided the following diagnoses: Mood disorder depression due to

general medical condition; Axis V/GAF 45. Also, 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's treating surgeon states "At the present time, her pain is at a severe enough level to fully interfere with all activities of daily living. She is homebound at this point. She is able to carryout activities of daily living as it pertains to self care. She is able to maintain her personal space as well as to attend to meals and caring for herself. While she does not require constant onsite nursing, or skilled care; she is otherwise entirely debilitated and unable to work at either a full or part-time capacity. This Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application. Claimant 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 unskilled medium work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of Social Security Listings 11.01 or 12.01.

The department denied disability based on Med-Voc Rule 203.21, 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/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 eligible for MA-P/SDA.

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.

Claimant must establish an impairment which is expected to result in death, has existed for a continuous period of 12 months, and prevents all basic work activities.

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 *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 disability using SSI Listing 11.01 and 12.01. SHRT decided that claimant does not meet any of the applicable SSI Listing.

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 home help aide for a hospital. This was medium work.

Except for the Medical Source Opinion (MSO) provided by the claimant's treating surgeon, there is no evidence that claimant cannot return to her previous work as a home health aide.

Because claimant's Medical Source Opinion (MSO) is not supported by the great weight of the evidence in the record, it will not be given controlling weight. 20 CFR 416.920(c)(d).

Since claimant is able to return to her previous work, she 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 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. Claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on trigeminal neuralgia which causes pain in her head, face, lips and tongue. Claimant underwent 3 surgical procedures in an effort to correct this impairment.

During the hearing, claimant testified that a major impediment to her return to work was her facial pain secondary to trigeminal neuralgia.

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 currently performs many Activities of Daily Living, is able to care for her 3 sons who live with her, and drives an automobile

approximately 8 times a month. Also, claimant is computer literate. She continues to attend church on a regular basis.

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 able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/SDA 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: March 30, 2010

Date Mailed: March 31, 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.

JWS/sd

cc:

