

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: 2009-25808
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 18, 2009
Allegan 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 August 18, 2009, in Allegan. Claimant personally appeared and testified under oath.

The department was represented by Linda Van Ess (FIM).

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) 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/SDA applicant (November 14, 2008) who was denied by SHRT (June 25, 2009) based on claimant's ability to perform unskilled sedentary work. SHRT relied on Med-Voc Rule 201.27 as a guide.

(2) Claimant's vocational factors are: age--37; education--high school diploma; post high school education--on the job training/certified nurse aide; work experience--home help aide for private pay client, light clerical work for home help agency.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006, when she worked as a home help aide.

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

- (a) Low back pain;
- (b) Unable to stand without pain;
- (c) Unable to focus;
- (d) Right leg numbness;
- (e) Left foot dysfunction;
- (f) Status post left foot surgery;
- (g) Difficulty walking;
- (h) Bilateral knee dysfunction;
- (i) Wants to lose weight;
- (j) Back dysfunction;
- (k) Unable to lift heavy amounts.

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

OBJECTIVE MEDICAL EVIDENCE (June 25, 2009)

X-rays in 7/08 of both feet showed post surgical changes from a previous navicular cuneiform fusion and calcaneal osteotomy which were well healed (page 85).

In 3/09 the claimant was 5'9" and 329 pounds. She reported that she was 373 pounds one year ago. The examination of her hands was unremarkable. She did have surgical scars on her left foot. There was no swelling or gross deformity of the feet. The knees were tender with slight crepitation noted. There was no ligamentous laxity. The gait was antalgic favoring largely the left foot. She was able to walk on heels and toes but appeared somewhat unstable with tandem gait (new information for [REDACTED]).

ANALYSIS:

The claimant is obese and had some tenderness and crepitation in her knees. She has pain in her left foot but was able to walk without assistance. The claimant would be able to do at least sedentary work.

* * *

(6) Claimant lives with her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), mopping, vacuuming, laundry and grocery shopping. Claimant was not hospitalized in 2008 or 2009. Claimant uses a cane approximately 17 times a month. She wears knee braces four times a month.

(7) Claimant does have a valid driver's license and drives an automobile approximately 50 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] report was reviewed.

The physician provided the following background:

Claimant is a 37-year-old woman with left foot problems, other lower extremity issues, and lower back problems. The left foot is her biggest problem. She had substantial surgery on it in 2006 and then hardware removed in 2007. The orthopedic foot subspecialist has told her that there is nothing more to be done surgically, and that the exam, etc., are favorable. There is a screw that was retained and the claimant suspects that is causing some of her symptoms although her doctor says not. Since there's little else she can do about it, she has diligently worked on weight loss and has been successful.

She also has had problems in the knees. Just a few weeks ago the right knee hurt while going up stairs and it has persisted. The swelling has gone down. She's had problems in the right foot and has arthritis in the left knee. She takes medications.

The lower back is a significant issue. She has spondylolisthesis and her physiatrist has said that after weight loss they will need to do a fusion. She is hoping to avoid the surgery.

She stopped working as a home health aide in 2006 and ultimately had a settlement so that her employment ended in January 2008. At this point she tries to exercise but rarely walks through the grocery store. Usually she rides the Amigo. If she takes two Vicodin then she can tolerate the pain involved in grocery shopping on her feet.

* * *

The consulting physician provided the following impressions:

- (1) Substantial issues with left foot;
- (2) Other lower extremity issues;
- (3) Spondylolisthesis and other health issues.

The consulting physician provided the following additional information:

Vocationally, she currently appears fit for only light employment. I do not expect that she would tolerate prolonged time on her feet nor bending and twisting at the back.

* * *

(9) Claimant does not allege a mental impairment as a basis for disability. Claimant did not provide a DHS-49D or 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 reported diagnoses of left foot dysfunction, right foot numbness/dysfunction, unable to stand without pain, knee dysfunction and obesity. However, the medical records show the following diagnoses: substantial issues with left foot, other lower extremity issues, spondylolisthesis and other health issues. The consulting physician did not

state that claimant was totally unable to work. He did state that claimant was unable to stand for a prolonged time and unable to perform work requiring bending or twisting at the back.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied her application. Claimant filed 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's impairments do not meet/equal the intent or severity of the Social Security Listing. The department thinks the medical evidence indicates claimant retains the capacity to perform a wide range of sedentary work.

The department denied disability based on claimant's vocational profile [younger individual (age 37) with a high school education and a history of unskilled work as a home help aide] based on Med-Voc Rule 201.27 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 disability exists for purposes of the MA-P/SDA programs. 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.

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

If claimant does not have an impairment or combination of impairments that profoundly limit her physical/mental ability to do basic work activities, she does not meet the Step 2 criteria. Under the *de minimus* rule, claimant meets the severity and duration requirements.

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 a Listing.

SHRT evaluated claimant's eligibility using the appropriate SSI Listings.

Claimant does not meet any of the SSI Listings.

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.

Claimant's work as a home help aide was medium/heavy work.

Because claimant's previous work as a home help aide required her to lift heavy amounts on a regular basis and be on her feet continuously, she is no longer able to return to her work as a home help aide.

Therefore, 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/psychological evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant does not allege disability based on mental impairment. Also, claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity. For these reasons, claimant is not entitled to MA-P/SDA based on a mental impairment.

Second, claimant alleges disability based on left foot dysfunction, bilateral knee dysfunction and low back dysfunction. The medical reports in the record do not contain probative medical evidence to show that claimant's physical impairments severely limit her ability to function. If necessary, claimant could use a wheelchair to move about. Claimant is able to perform sedentary work.

Third, claimant alleges disability based on chronic 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 combination of impairments. Currently, claimant performs many activities of daily living and has an active social life with her husband, and drives an automobile 50 times a month.

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). There are many sedentary jobs that claimant could perform even if she was confined to a wheelchair, or a walker. 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]. Because of the handicapper laws recently enacted in the United States, there are many jobs available for persons with handicaps similar to claimant.

Consistent with 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 26, 2010

Date Mailed: March 29, 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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