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: 2009-27715
Issue No: 2009
Case No: [redacted]
Load No: [redacted]
Hearing Date:
August 6, 2009
Oceana 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 hearing was held on August 6, 2009, in Hart.

ISSUES

(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 (January 20, 2009) who was denied by SHRT (July 8, 2009) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—25; education—high school diploma, post-high school education—has a certificate as a nurse aide (CNA); work experience—certified nurse assistant for a psychiatric hospital in [redacted], certified nurse aide for [redacted].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since January 2009, when she worked as a certified nurse aide at the [redacted] in [redacted].

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

(a) Status post brain bleed;
(b) Status post stroke;
(c) Statue post left sided paralysis;
(d) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (JANUARY 8, 2009)

> Claimant was admitted 1/6/2009 due to an intra parenchymal bleed (p. 35). She was admitted 1/11/2009 for the same diagnosis (p. 13).
>
> A CT scan of the brain in 3/2009 showed marked improvement, since the prior study in January 2009 (p. 4).
>
> Her examination in 3/2009 was essentially non-focal (p. 23).

> In 9/2009, claimant was evaluated for seizures. Her seizures seemed confined to the left side of the body and she may maintain some degree of consciousness during that period. She might fall backwards and she might have a blank stare and some jerking of the left arm. There were no neurological deficits. An EEG did show significant slowing in the right brain, but no definite seizure features. Medications were adjusted (new information from [redacted]).
>
> A Mental Status, dated 6/2009 showed claimant's speech was clear and understandable. She was not very talkative and not very detailed oriented in her responses. She did not smile. She was able to make and maintain eye contact. She was sort of bland and blah in her presentation. Diagnosis was mood disorder due to a general medical condition (new information from [redacted]).
>
> **ANALYSIS:**
>
> Claimant had an intra parenchymal bleed/stroke in 1/2009. In 3/2009 and 4/2009 her neurological findings were unremarkable. She reports some seizures and is on seizure medications now. Her mental status showed her affect was bland and blah, but there was no thought disorder. Claimant would be capable of unskilled light work, avoiding working around unprotected heights and dangerous machinery.
>
> * * *

(6) Claimant lives with her mom and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking (sometimes), dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces on her neck, back, arms or legs. Claimant was not hospitalized as an inpatient in 2008. She was hospitalized in January 2009 for 5 days to receive treatment for a brain bleed/stroke.

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

(8) The following medical records are persuasive:

(a) A June 20, 2009 Psychiatric/Psychological Medical Report was reviewed.

The PhD psychologist provided the following background:

Claimant is a 24 year-old, 10 month old female. She alleges disability due to "seizures and I am weak." She said that she had a Grand Mal seizure in 2004, and then did not have anymore until after her stroke in January 2009. she said that her brother told her she was acting funny and made her go to the emergency room. She had a bleed on the brain. She said that her left side was really messed-up for a while, but has gotten better. She says that she now has seizures when she didn't used to have them. She had to move to Michigan from [redacted] where she had been living. The last time she had a seizure was the day before yesterday. She normally gets them when she is tired or when she first wakes up. She says that she has a lot of seizures since her stroke. For a while she was having them every day. In the past month, she said she could not say how many seizures she had. When asked to guess, she said maybe 15.

Other than the seizures, she said that she is still weaker on her left side, is depressed and gained a ton of weight (maybe 50 pounds since last January 2009). She says she cannot think of any problems that she is having right now due to the stroke.

Personal History:

* * *

Claimant is not presently employed. The last work she did work was January 5, 2009. She was working in [redacted] at [redacted] as a CNA. She worked there for about 9 months. She said that she liked her job and things were going good there. She said that she is now in Michigan State, prior to that she worked at [redacted] and [redacted] as a CNA for about 7 months. She stopped working there because they did not pay enough and she quit. The longest period of time she ever worked in one place was [redacted], Michigan, making shifters for 4 years. She said that she stopped working there because she became a CNA. Claimant is not looking for work right now. She said that she has been released to go back to work, but can't work near heights or near the water. She said that she was released to go back to work at her last doctor appointment. She said she plans on going back to

work, but thinks right now she gets too tired to do it. She has not filled-out any job applications anyplace.

The PhD psychologist provided the following diagnosis:

Axis I—Mood disorder due to a general medical condition; Axis V/GAF—55.

(b) A [redacted] was reviewed.

The neurologist provided the following assessment:

Claimant returns today for a continuing follow-up. She seems to be fairly stable after her most recent visit to the Emergency Room with her headache. CT scan shows no evidence of any new hemorrhage or lesion everything looks stable at this point. She is continue to be treated with [redacted] for her headaches and seizures as there is not much more we have to offer her.

* * *

(c) An [redacted] was reviewed.

The neurologist provided the following background:

History of present illness: claimant had an intracerebral bleed on the right side in [redacted]. She was then shipped to [redacted]. She was there for 4 days and then discharged. She subsequently required admission to [redacted]. She has been on Tegretol.

* * *

Sometimes when she is tired her left side of her face will sag a little. Her seizures seem confined to the left side of her body and she may maintain some degree of consciousness during that period. They may last up to 5 or 10i minutes. She might fall backwards. She might have a blank stare and some jerking of the left arm. She may be agitated.

* * *

NEUROLOGIC:

Normal Mental Status: Cranial nerve examination.

* * *

> Visual fields were full to confrontational testing. Facial movement and appreciation of light touch in the face was intact. Her tongue protruded in the midline and moved well from side-to-side.
>
> Motor Examination: The gait was normal. Romberg sign was not present. Strength was normal in both upper and lower extremities to manual muscle testing. Finger-nose-finger and heel-to-shin was done well. Romberg upper movements were intact. Tandem walk was done well. No atrophy or fasciculation were noted. Tongue was normal. Deep tendon reflexes were normal and symmetrical in both upper and lower extremities. No pathological reflexes were seen on Babinski testing.
>
> DISCUSSION: I don't find any neurological deficits on exam today.
>
> * * *
>
> I informed her that she could not drive a car until she has been seizure free for 6 months. She should not operate dangerous machinery, climb dangerous heights, or swim. She had an EEG done which showed significant swelling in the right brain, but no definite seizures. I asked to sign a Release of Information to be sent to [redacted] so I can see what kind of work-up she had.

* * *

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition which is expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she has occasional seizures and loses function on her left side. A recent psychological evaluation provided a diagnosis of Mood disorder, due to a general medical condition with an Axis V/GAF at 55. Also, 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 was recently evaluated by a neurologist. The neurologist reported normal mental status. He provided a diagnosis of seizure, intra cerebral bleed. The neurologist said she should not drive, operate dangerous machinery, climb to dangerous heights or swim. An EEG showed significant slowing in the right brain, but no definite seizure features.

(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's impairments do not meet or 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 unskilled light work, avoiding work around unprotected heights and dangerous moving machinery.

Based on claimant's vocational profile [younger individual (age 25) with a high school education and a history of unskilled work], the department denied MA-P eligibility using 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).

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 <u>not</u> 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 combined 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 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.

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, 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. SHRT evaluated claimant's disability under the applicable Listings. Claimant did not meet any of the 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 a certified nurse aide for a psychiatric hospital. Claimant's work at the psychiatric hospital was medium work.

The medical evidence in the record does not establish claimant is able to return to her previous work. However, because of claimant's history of unpredictable seizures, it would not be appropriate for her to be responsible for patient care.

Since claimant is unable to return to her previous work as a certified nurse aide, 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 purposes.

First, claimant alleges disability based on a mental impairment: depression.

The recent psychiatric/psychological examination provided a diagnosis of Mood Disorder due to general medical condition, and an Axis V/GAF of 55. Also, claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on her seizures. The recent neurological report does not state that claimant is totally unable to work. The neurologist simply states that claimant is not to drive, operate dangerous machinery, climb to dangerous heights or swim. He does not state that claimant is not able 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 a significant number of Activities of Daily Living and has an active social life with her mother. Claimant is also computer literate.

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]. Since claimant has computer skills, she would also be able to work as a computer data processor from home.

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 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 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 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: [redacted]