

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: 2009-30584  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
October 21, 2009  
Ionia 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 Ionia on October 21, 2009. Claimant personally appeared and testified under oath.

The department was represented by Steve Spitzer.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude from substantial gainful work, **continuously**, for one year (MA-P)?

(2) Did claimant establish a severe physical impairment expected to preclude 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 (February 25, 2009) who was denied by SHRT (August 10, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: Age – 41; education – 9<sup>th</sup> grade; post high school education – GED; work experience – adult foster home residential instructor, home help provider for DHS, adult foster care aid.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since June, 2009 when she was an adult foster home residential instructor.

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

- (a) Status post stroke;
- (b) Speech impairment (dysarthria)
- (c) Mild upper extremity weaknesses
- (d) Right side numbness

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

Claimant was admitted in 2/2009 due to a stroke. At the time of admission, claimant was noted to have dysarthria and mild right upper extremity weakness. Her neurological deficits significantly improved during her hospitalization, with only minimum dysarthria and minimal numbness in her right side at the time of discharge. (Pgs 60-61)

ANALYSIS:

Claimant had a stroke in 2/2009 and minimal dysarthria and minimal numbness in her right hand at the time of discharge.

\*\*\*

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): Dressing (sometimes), bathing (sometimes), dishwashing (sometimes) light cleaning, mopping (sometimes) laundry and grocery shopping. Claimant was not hospitalized in 2008. In 2009 she was hospitalized for a TIA (stroke) and two major strokes.

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

(8) The following medical records are persuasive:

(a) A 3/4/2009 medical examination report (DHS-49) was reviewed. The physician provided the following diagnosis:

- (1) Left frontal SVA (cerebral vascular accident);
- (2) Dysarthria secondary to (1);
- (3) Left ICV occlusion secondary to dissection.

The physician reported the following physical limitations: Claimant is able to lift up to 20 pounds frequently and up to 25 pounds occasionally. She can stand/or walk about 6 hours in an 8 hour day. She can sit about 6 hours in an 8 hour day. She is not able to use her hands/arms for simple grasping, reaching, pushing/pulling or fine manipulating. She has normal use of both legs. The physician reported no mental limitations.

(b) A [REDACTED] discharge summary was reviewed.

The physician provided the following admission diagnosis:

- (1) Dysarthria with presumed stroke;
- (2) Carotid stenosis;
- (3) Hypertension;
- (4) Depression and anxiety;
- (5) Tobacco abuse

The physician provided the following discharge diagnosis:

- (1) Left frontal ischemic stroke;
- (2) Left internal carotid occlusion secondary to dissection;
- (3) Right internal carotid artery stenosis approximately 50%;
- (4) Hypertension
- (5) Steroid-induced hyperglycemia, resolved;
- (6) Depression with anxiety;
- (7) Gastroesophageal reflux disease;
- (8) Tobacco abuse.

\*\*\*

The discharge physician also counseled claimant about tobacco cessation.

(9) Claimant does not allege disability on a mental impairment. Claimant did not provide any clinical (psychiatric/psychotically) evaluations. Claimant did not provide a DHS-49(d) or a DHS-49(e) to establish her mental residual functional capacity.

(10) Claimant alleges disability based on a combination of physical impairments (status post stroke dysarthria, speech dysfunction, right upper extremity weakness and right hand numbness). The recent [REDACTED] discharge summary shows the following discharge diagnosis:

- (1) Left frontal ischemic stroke;
- (2) Left internal carotid occlusion, secondary to dissection;
- (3) Right internal carotid artery stenosis approximately 50%;
- (4) Hypertension;
- (5) Steroid-induced hyperglycemia;
- (6) Depression with anxiety;
- (7) Gastroesophageal reflux disease;
- (8) Tobacco abuse.

Claimant testified that she has numbness in her right hand and difficulty speaking. The consulting [REDACTED] internist did not say that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Her application is currently pending.

(12) Claimant currently smokes approximately 4 packs of cigarettes per week, contrary to medical advice (AMA).

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

Claimant thinks she is entitled to MA-P benefits based on the impairments listed in paragraph 4, above.

**DEPARTMENT'S POSITION**

The department thinks that claimant has failed to establish an impairment which meets the department's severity and duration requirements.

The department thinks that the medical evidence of record shows claimant's condition is improving, or is expected to improve within 12 months of the date of onset.

**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).



The department decides eligibility issues, based on mental impairments, using the following standards.

**(a) Activities of Daily Living.**

...**Activities of daily living** including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

**(b) Social Functioning**

...**Social functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

**(c) Concentration, Persistence or Pace.**

...**Concentration, persistence or pace** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other

settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

**(d) Sufficient Evidence:**

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

**(e) Chronic Mental Impairments:**

**...Chronic Mental Impairments:** Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

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 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 purposes. PEM 260. “Disability,” as defined by MA-P 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. 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. Claimant must establish an impairment which is expected to result in death, has existed for at least 12 months and/or totally prevents all basis work activities. 20 CFR 416.909.

Also, to qualify for MA-P, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Applying the *de minimus* standard, claimant meets the severity and duration requirements and meets the Step 2 disability 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 a 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's last employment was working for an adult foster home as a residential instructor. This was light work.

The medical evidence of record establishes that claimant's functional ability is impaired to the degree that she is unable to perform normal work activities (simple grasping, reaching, pushing/pulling and fine manipulating with her right and left hands). Since claimant's previous work as an adult home help aid required her to perform numerous activities requiring extensive manual dexterity, she is unable to return to her previous work as a home help aid for an adult foster home.

Since claimant is unable to return to her previous work, 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 combination of mental impairments (depression and anxiety ). There is no recent clinical evidence to establish the severity of claimant's depression and anxiety. Claimant did not provide a clinical assessment of her current mental status. Also, claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on her speech impairment (dysarthria and mild right upper extremity weakness). The medical records do show that claimant has some functional impairments involving the use of her upper extremities. A [REDACTED] physician reported that claimant is not able to perform simple grasping, reaching, pushing/pulling or fine manipulating. Although claimant does have limitations based on her lack of manual dexterity, the medical evidence of record does not show that claimant is totally unable to perform sedentary work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Claimant performs a significant number of activities of daily living, has an active social life with her friends and is able to function well enough with her activities of daily living in order to live alone.

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 was able as a ticket taker for a theater, as a parking lot attendant and as a greeter for [REDACTED].

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

Finally, the Administrative Law Judge is not able to award disability benefits to claimant because she is acting against medical advice (AMA) by continuing to smoke, contrary to her physical health and the advise of her doctors.

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 MA-P is, AFFIRMED.

IT IS SO ORDERED.

/s/

\_\_\_\_\_  
Jay W. Sexton  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: May 4, 2010

Date Mailed: May 5, 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 receipt date of the rehearing decision.

JS/lk

cc:

