

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: 2009-3549
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 27, 2009
Alpena 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 Alpena on January 27, 2009. Claimant personally appeared and testified under oath. Claimant was represented by Gary Bida from ADVOMAS. Claimant's SSA Attorney, Roger Bauer and Byron Laduc, observed the hearing.

The department was represented by Betty Valley (ES).

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 a MA-P applicant (July 28, 2008) who was denied by SHRT (November 12, 2008) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.0, as a guide.

(2) [REDACTED]

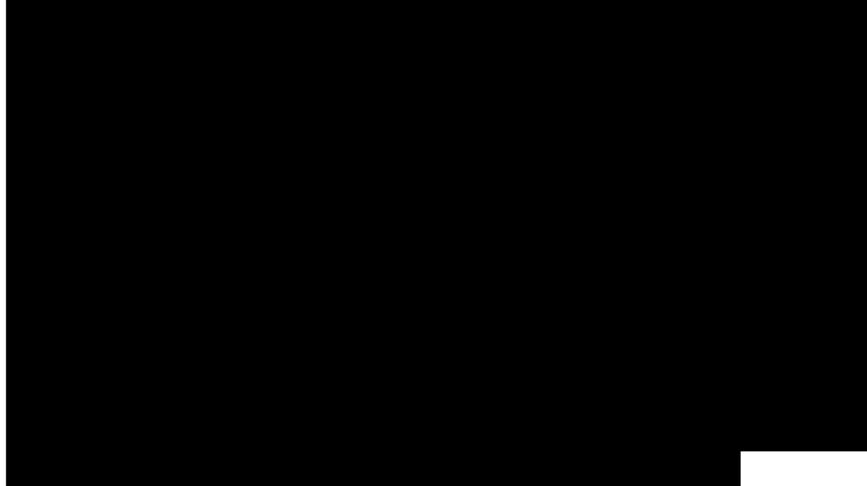
(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004 when [REDACTED]

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

- (a) upper back pain;
- (b) lower back pain;

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

[REDACTED]



(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing. Claimant uses a cane on a daily basis. She wears bilateral wrist braces approximately four times a month. Claimant was hospitalized as an in patient in July-August for 11 days, to receive treatment for a perforated gastric ulcer. Claimant has not received any in patient hospitalization in 2009.

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

(8) The following medical records are persuasive:



- (a) degenerative of lumbar or lumbosacral intervertebra;
- (b) diabetes mellitus type II;
- (c) hypertension;
- (d) obesity;
- (e) carpal tunnel syndrome.



Claimant has no mental limitations.

(b)



- (a) status post exploratory laparotomy;
- (b) antretomy;



Claimant has no mental limitations.

(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. There are no psychological reports in the record. Claimant did not provide a DHS-49D or DHS-49E to show her residual mental 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 medical/vocational records do show the following exertional impairments: degeneration of lumbar or lumbosacral intervertebra, diabetes mellitus type II; hypertension; obesity; and carpal tunnel syndrome. The surgeon who submitted a DHS-49 report 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'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 light work. Based on claimant's vocational profile (a younger individual, a 12th grade education and history of unskilled work), the department denied MA-P benefits based on Med-Voc Rule 202.30, 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 the 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 conditions, age, education and 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 eligibility 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 is expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

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 a *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 SSI Listings.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP 4

The issue at Step 4 is whether the claimant is able to do her previous work. Claimant previously [REDACTED]

[REDACTED]
[REDACTED] at least two hours in an eight-hour day. Because work [REDACTED] requires claimant to stand for a continuous shift of eight hours, she [REDACTED]

[REDACTED] meets the Step 4 disability

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 mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental impairment. Furthermore, there is no medical evidence showing a mental impairment that would preclude all substantial gainful activity.

Second, claimant alleges that she is unable to work based on her upper and lower back dysfunction in combination with her carpal tunnel impairment. Medical records show the following impairments: low back pain, T8 herniation of the thoracic spine, mild degenerative changes at L4-5. Questionable listhesis was also noted. Claimant is obese but has normal blood pressure. The medical records also report hypertension and diabetes mellitus type II. Medical records substantiate the conclusion that claimant is limited to performing light work.

Third, during the hearing, claimant testified that a major impediment to her return to work was thoracic and lumbar spinal pain. The evidence of pain, alone, is insufficient to establish disability for MA-P purposes.

The medical/vocational evidence of record shows the claimant is, at the very least, able to perform sedentary work. This includes employment as a ticket taker for a theatre, as a parking lot attendant, or as a greeter for Wal-Mart. Based on this analysis of claimant's non-exertional and exertional impairments, as well as claimant's testimony under oath, the department correctly denied claimant's MA-P application.

In short, the Administrative Law Judge is not persuaded the claimant is totally unable to work based on her combination of physical impairments including degeneration of the lumbar spine, diabetes mellitus type II, hypertension, obesity, and carpal tunnel syndrome. Claimant

currently performs several activities of daily living, has an active social life with her husband and was able to represent herself cogently at the hearing. The totality of the evidence in the record means that claimant is able to perform unskilled sedentary work (SGA) at this time.

Based on this analysis, the department correctly denied claimant's MA-P application based on Step 5 of the sequential analysis as presented above. Also, claimant is not eligible under Med-Voc Rule 202.20.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet MA-P/SDA disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P is, hereby, AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 9, 2009

Date Mailed: February 9, 2009

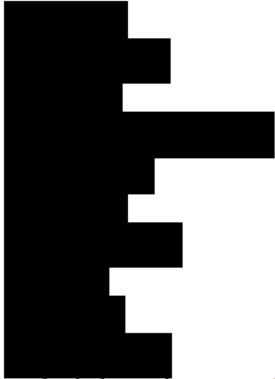
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final 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.

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JWS/db

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Administrative Hearings (2)