

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: 2009-3783
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 2009
St. Clair 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 January 11, 2009, in Port Huron, Michigan. Claimant personally appeared and testified under oath.

The department was represented by Deidre Michell (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

- (1) Did claimant establish a severe 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) The claimant is an MA-P/retroactive applicant (August 6, 2008) who was denied by SHRT (November 17, 2008) due to claimant's ability to perform unskilled sedentary work. SHRT relied on Med-Voc Rule 201.21 as a guide. Claimant requests retro MA for May, June and July 2008.

(2) Claimant's vocational factors are: age—45; education—high school diploma; post high school education—two semesters at [REDACTED] (Accounting Major); work experience—cashier and drive-thru assistant at [REDACTED]; certified Nurse Aide/Home Help Provider.

(3) Claimant has not performed substantial gainful activity (SGA) since 2003 when she was a cashier at [REDACTED].

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

- (a) Multiple Sclerosis (MS);
- (b) Fluid on the brain;
- (c) Degenerative disc disorder of the back;
- (d) Chronic back pain;
- (e) Programmable shunt;
- (f) Headaches;
- (g) Needs prescription medications;
- (h) Doctor has ordered no heavy lifting provision issued by doctors.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

ANALYSIS

Claimant has a history of pseudo tumor cerebri, iatrogenic chiari malformation, multiple shunt procedures and herniated L4-L5 disc surgery. She is also noted to have MS/Muscular Sclerosis. On exam, she had some weakness in the upper left and right lower extremity. The doctor also indicated that she had some balance problems. She had no problem with dexterity or grip. Claimant's treating physician has given less than sedentary work restrictions, based on claimant's physical impairments. However, this Medical Source Opinion (MSO) is inconsistent with the great weight of objective medical evidence in the record and per 20 CFR 416.927(c) and 416.927(d), it will not be given controlling weight. The collective objective medical evidence in the record shows that claimant is capable of performing at least simple, unskilled, sedentary work.

* * *

Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, laundry and grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair or shower stool. She does not wear braces. Claimant did not receive inpatient hospital services in 2008 or 2009.

- (6) Claimant has a valid driver's license and drives an automobile approximately once a month. Claimant is computer literate.
- (7) The following medical records are persuasive:
- (a) The medical records have been summarized by SHRT in Paragraph #5 above.
- (8) The probative medical evidence does not establish an acute psychological condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant does not allege a mental impairment as the basis for her

disability. Claimant did not provide a DHS-49D and a DHS-E to establish her mental residual functional capacity.

(9) The probative medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The medical evidence of record provides the following diagnoses: pseudo tumor cerebri, iatrogenic chiari malformation, multiple shunt procedures and herniated L4-L5 disc with surgery. An examining physician reports that claimant has a partial impairment in her left arm and lower right leg. She also has slight balance impairment. However, these diagnoses do not prevent her from performing substantial gainful activity of a sedentary nature.

(10) Although claimant's treating physician states she is totally unable to work, this MSO (Medical Source Opinion) contrary to the great weight of the medical evidence in the record and will not be given controlling weight.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Her application was denied by Social Security. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/retro based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks the claimant is able to perform simple unskilled sedentary work.

The department thinks the claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

Based on claimant's vocational profile as a younger individual, 12th grade education and a history of unskilled work, the department denied MA-P based on Med-Voc Rule 201.21 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 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).

Claimant has the burden of proof to show by the 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 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 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 totally prevents all current work activities. 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. The claimant does not allege disability based on 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 cashier and drive-thru assistant for [REDACTED]. This was unskilled sedentary work.

The medical evidence establishes that claimant has a lifting requirement (2.5 pounds) and has some impairment in her left arm and in her lower right leg. Claimant also has slight balance impairment. However, these diagnoses do not prevent claimant from returning to her previous job (sedentary) as a cashier and drive-thru assistant for [REDACTED].

Therefore, claimant does not meet the Step 4 disability test.

STEP #5

The issue at Step 5 is whether the 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 combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on her need for medications and her history of pseudo tumor cerebri, Chiari malformation, status post multiple shunt procedures and status post herniated disc surgery at L4-L5. Although claimant's treating physician states that she is totally unable to work, this MSO (Medical Source Opinion) is contrary to the great weight of the evidence of the record and will not be given controlling weight. Claimant's physical impairments, at this time, do not preclude sedentary employment.

Finally, claimant testified that a major impediment to her return to work was her herniated disc dysfunction and related pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P 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 status post herniated disc surgery and the other impairments noted in Paragraph 5 above. Claimant currently performs many activities of daily living, has an active

social life with her children and drives an automobile occasionally. Claimant is 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 physically able to work as a ticket taker for a theater, as a parking lot attendant, as a greeter at [REDACTED], and as a telemarketing representative.

Finally, claimant testified that she is able to work part-time. MRS agrees with claimant's assessment because they would not maintain claimant on their rolls as an active recipient of MRS services if claimant was not employable in the near future.

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 20, 2009

Date Mailed: March 23, 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.

JWS/tg

cc:

