

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: 2009-11750
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2009
Genesee 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 Flint on March 11, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Patrick Goodall (FIS).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on March 12, 2009. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude him 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 him 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/retro/SDA applicant (July 23, 2008) who was denied by SHRT (February 10, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for May and June 2008.

(2) Claimant's vocational factors are: age--50; education--10th grade, post-high school education--none; work experience--care provider and cook at a long-term care facility for assisted living residents.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008, when she worked as a resident attendant/care provider/meal preparer for a long-term care facility.

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

- (a) Reduced ability to lift;
- (b) Reduced ability to bend;
- (c) Reduced ability to pick up items and to perform pushing/pulling;
- (d) Numbness in both hands;
- (e) Feet turn blue;
- (f) Neuropathy;
- (g) Diabetes;
- (h) Difficulty climbing stairs;
- (i) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (February 10, 2009)

SHRT decided that claimant is able to perform normal work activities.

SHRT evaluated claimant's disability using SSI Listings 3.01, 1.01 and 9.01.

SHRT decided that claimant does not meet the department's severity and duration requirements.

* * *

(6) Claimant lives with her adult daughter and performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, cooking (needs help), light cleaning and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces. Claimant received in-patient hospital care in May 2008, for treatment of diverticulitis.

(7) Claimant has a valid driver's license and drives an automobile approximately twice a month. Claimant is not computer literate, but she uses the computer to play games.

- (8) The following medical records are persuasive:

- (a) A September 17, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses: large mesenteric cyst (on the colon) which was excised.

The physician provided the following functional limitations: Claimant is able to lift less than 10 pounds occasionally. Claimant is able to stand and walk normally. She is able to sit normally. Claimant is able to use her hands/arms normally. Claimant is able to use her feet/legs normally.

- (b) A June 27, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses: obesity and depressive mood. The claimant weighed 305 pounds at the time of the exam.

The physician provided the following limitations: Claimant is able to lift less than 10 pounds occasionally. She is able to stand/walk less than 2 hours in an 8-hour day. She is able to sit less than 6 hours in an 8-hour day. She is able to use her hands/arms normally. She is able to use her feet/legs normally. The physician reported a depressed mood.

The physician did not report that claimant is totally unable to work.

(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 recent medical evaluations in the record. Claimant did not submit a DHS-49D or a DHS-49E to show 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's physicians did report that she has a reduced ability to lift due to the major surgery she had on her colon to remove a cyst in 2008. While the physicians who submitted reports indicate that claimant has lifting restrictions, they do not indicate any other important restrictions that would totally preclude sedentary 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/SDA benefits based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled work.

The department thinks that claimant's impairments do not meet SSI Listings 3.01, 1.01, or 9.01.

The department denied claimant's disability application based on claimant's failure to establish an impairment which meets the department's severity and duration requirements.

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 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/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/SDA 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/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 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, or has existed for a continuous period of 12 months thereby preventing all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SA, 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 the Listings.

SHRT reviewed claimant's eligibility based on SSI Listings 3.01, 1.01, and 9.01.

SHRT decided that claimant does not meet any of the applicable SSI Listings.

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

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a care provider and cook for a long-term care facility. Claimant's work at the long-term care facility was medium work.

The medical evidence of record shows that claimant is not able to lift more than 10 pounds frequently.

Because work as a chore services provider for a long-term care (LTC) facility requires heavy lifting on a regular basis, claimant is not able to return to her previous work as a chore services provider for a LTC facility.

Since claimant is unable to return to her previous work as a chore services provider for a LTC, 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/psychological evidence in the record, that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant did not provide a recent psychiatric assessment. Also, she did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity. Claimant has not established a severe mental impairment.

Second, claimant alleges disability based on her physical impairments (reduced ability to lift, reduced ability to bend, reduced ability to pick up items or to do pushing-pulling, numbness in both hands, feet turn blue, neuropathy, diabetes, and depression). The medical evidence of record does not establish that claimant's physical impairments are so severe that she is totally unable to perform any work. The physicians who provided the medical examination reports indicated that claimant had a reduced ability to lift. However, her ability to stand, walk, and sit were essentially normal. Also, claimant's ability to use her hands/arms was normal. Also, her ability to use foot control was normal based on the medical records.

The great weight of the medical evidence regarding claimant's physical impairments shows that claimant is able to perform sedentary work.

During the hearing, claimant testified that a major impediment to her return to work was her back dysfunction with pain, as well as numbness in her feet and hands. 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 back dysfunction, leg dysfunction and radiating pain.

Claimant currently performs many activities of daily living, has an active social life with her daughter and drives an automobile occasionally.

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 theatre, as a parking lot attendant, and as a greeter for [REDACTED].

Based on 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: February 26, 2010

Date Mailed: February 26, 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/cv

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