

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: 2009-4825
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 25, 2009
Wayne 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 February 25, 2009, in Detroit. Claimant personally appeared and testified under oath.

The department was represented by Kendra Hall (Medical Contact Worker).

The Administrative Law Judge appeared by telephone from Lansing.

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 applicant (July 11, 2008) who was denied by SHRT (December 3, 2008) 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--56; education--11th grade, post-high school education--none; work experience--clothing press operator at a dry cleaning store, jewelry sales representative, school lunch aide and janitor.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 1990, when she worked as a presser at a dry cleaning store.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Bad heart;
 - (b) Status-post stents x2 (March and July 2008);
 - (c) Soreness in left leg;
 - (d) Difficulty walking;
 - (e) Difficulty lifting;
 - (f) Asthma.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (December 3, 2008)

Claimant was admitted in 3/2008 due to chest pain (page 39). Auscultation of the lungs revealed normal breath sounds. There were no abnormal heart sounds or murmurs. Muscle strength, tone, range of motion and gait were within normal limits. There was no calf tenderness (page 40). On 3/18/2008, claimant underwent left and right coronary angiogram which revealed patent left main coronary artery. She had successful stenting of the proximal mid-left anterior descending (LAD). Staged angioplasty was planned (pages 31-32). On 3/20/2008, claimant had successful staged PIC of the left circumflex and OM1 branch (pages 25-26).

A DHS-49 form, dated 4/2008, showed claimant's exam was within normal limits (page 8). The doctor indicated claimant could occasionally lift 10 pounds and stand/walk less than 2 hours (page 9).

ANALYSIS: Claimant has coronary artery disease and is status-post staged angioplasty and successful stenting x2. Claimant's exam was within normal limits in 4/2008. 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 the objective medical evidence. Based on SSI regulation 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d, SHRT will not give the medical source opinion controlling weight. The collective objective medical evidence of record shows that claimant is capable of performing medium work.

* * *

(6) Claimant lives with her daughter and three grandchildren. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning and laundry (sometimes). Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces. Claimant receiving inpatient hospital services on two different occasions in 2008 to receive coronary stents.

(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) The medical records are summarized by SHRT at paragraph #5, above.

* * *

(9) The probative psychological 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. The DHS-49, dated April 14, 2008, states that claimant has no mental limitations. Also, claimant did not provide a DHS-49D or a DHS-49E to substantiate her

mental residual functional capacity. Taking the medical record as a whole, claimant has not established that she is totally unable to work based on her mental impairment.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she is unable to work due to a bad heart, status-post stents x2, sore left leg, difficulty walking, difficulty lifting and asthma. A recent medical report (April 14, 2008) shows diagnoses of arthritis, coronary artery disease and status-post angioplasty. Claimant's physician states she is able to occasionally lift up to 10 pounds, able to stand or walk less than 2 hours, and able to use her hands and arms normally. He does not report any limitations with claimant's legs or feet. The report by claimant's physician (MSO) is inconsistent with the great weight of the objective evidence in the record and will not be given controlling weight based on federal regulation 20 CFR 416.927c and d. Since this record contains contradictory evidence, the Administrative Law Judge concludes that the reliable medical evidence in the record does not establish a severe disabling physical condition at this time.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application; claimant filed a timely appeal.

(12) Claimant is a former SSI recipient. Social Security closed her case in February 2008.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant thinks she is entitled to MA-P benefits because she is unable to pay for her prescription medications without MA-P benefits.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform medium work. The department thinks that claimant retains the Residual Functional Capacity (RFC) to perform her prior (medium) work

The department denied disability benefits for this reason.

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 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 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, or has existed for at least 12 months, totally preventing 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 duration/severity 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.

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 last worked as a presser at a dry cleaning store. This work was light work.

The medical evidence establishes that claimant has asthma as well as a heart impairment and difficulty standing for long periods. Based on the current medical evidence of record, claimant is not able to return to her previous job as a presser for a dry cleaning store.

Therefore, claimant 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 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 a bad heart, status-post arterial stents x2, a sore left leg, difficulty walking, difficulty lifting and asthma. The medical authorities provide the following diagnoses: asthma, coronary artery disease and status-post angioplasty. These conditions preclude jobs that require heavy lifting and continuous standing. However, claimant's diagnoses do not preclude sedentary employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her heart disease, status-post stents and asthma. Claimant currently performs many activities of daily living, and has an active social life with her daughter and her grandchildren.

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], or any other job that has a sit/stand option.

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: July 7, 2009

Date Mailed: July 7, 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 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

cc:

