

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: 2009-5328
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 28, 2009
Oscoda 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 on January 28, 2009, in Mio. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED].

The department was represented by Kim Wright (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to SHRT on January 29, 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 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 (June 25, 2008) who was denied by SHRT (December 8, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age—54; education—high school diploma; post high school education—none; work experience—self-employed house cleaner, private duty nurse, and assistant manager for [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since August 2008 when she worked as a self-employed housecleaner in Florida.

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

- (a) COPD;
- (b) Asthma;
- (c) Allergies;
- (d) Bronchitis;
- (e) Sleep dysfunction
- (f) Fatigue;
- (g) Anemia.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

Claimant is 54 years old with 12 years of education in an unskilled work history. Claimant alleges disability due to chronic pulmonary insufficiency, asthma and anemia.

Claimant does not meet SSI Listings 1.02 and 1.04.

Claimant is not eligible for MA-P/retro because her impairments improved with treatment and do not prevent all work activities for 12 months.

(6) Claimant performs the following activities of daily living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning (sometimes), vacuuming (sometimes), laundry and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or a shower stool. Claimant does not wear braces on her neck, back, arms or legs.

(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 [REDACTED] Medical Examination Report (DHS-49) was reviewed. The family physician provided the following diagnoses: COPD and depression.

The family physician provided the following limitations: claimant is able to lift up to 50 pounds occasionally. She was able to sit/walk about six hours in an eight-hour day. She was able to sit about eight hours in an eight-hour day. She was able to use her hands/arms normally. There is no information on her ability to use her feet/legs.

The family physician states that claimant has no medical limitations.

(b) An [REDACTED] narrative report was reviewed.

The physician provided the following background:

Claimant was seen in follow up care for COPD. She had recently been hospitalized and had been smoking regularly up until admission. She has taken a long list of cordio steroids. She also reports, 'I quit smoking.' She states that her sleeping is much better. She has no cough. She has only occasional wheezing in the morning, but nothing that is 'bad.' She has dysthymia on exertion but enjoys full activities of daily living.

Impression:

It is satisfying to see that she has made great progress since hospitalization. I had a long talk with her concerning proper expectations for good reasons. Otherwise, she is eager and likes the idea that she is the best she could be—in her words.

* * *

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all types of work functions for the required period of time. Claimant alleges disability based on depression. However, there are no psychological reports in the record. The claimant did not provide a DHS-49D or DHS-49E to show her mental residual functional capacity. The DHS-49 prepared by claimant's family physician does not contain any clinical basis for a diagnosis of depression.

(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 records reveal the following exertional impairments: COPD. However, the [REDACTED] report presented by claimant's pulmonologist states that she is making significant progress in the treatment of claimant's COPD. The physician reported that claimant has quit smoking. However, at the hearing, claimant testified that she smokes approximately two cigarettes a day.

(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 evaluated claimant's eligibility for MA-P based on SSI listings 1.02 and 1.04.

The department denied MA-P eligibility because claimant has not established an impairment which meets the severity and duration requirements under 20 CFR 416.909.

Finally, the department noted that claimant's breathing impairment improved with treatment and is not expected to prevent all work activity for 12 months or more.

LEGAL BASIS

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 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 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 and 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 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 lasted or be expected to last 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). If claimant does not have an impairment or combination of impairments which profoundly limits her mental/physical ability to do basic work activities, she does not meet the Step 2 disability criteria.

Since the severity and duration requirements are *de minimus* requirements, claimant meets the Step 2 eligibility test.

STEP #3

The issue at Step 3 is whether claimant meets the Listings of Impairments in the SSI regulations. SHRT evaluated claimant's eligibility under SSI Listings 1.02 and 1.04. Claimant does not meet the applicable 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 self-employed housecleaner. The medical evidence of record does establish that claimant has allergies and COPD. Since a housecleaner must use many different cleaning products, claimant is unable to perform her past work as a housecleaner because of a possible allergic reaction to cleaning chemicals.

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 evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on a mental impairment: depression. The June 9, 2008 report by claimant's family physician states that she is depressed. However, the physician did not provide any clinical evidence in support of his opinion. In addition, there are no psychological evaluations prepared by a Ph.D. psychologist in the record. Also, claimant did not provide a DHS-49D or a DHS-49E to establish claimant's mental residual functional capacity

Second, claimant testified that a major impediment to her return to work was her COPD and fatigue. Claimant's position is not supported by the report of her family practice physician. He states that claimant is able to occasionally lift up to 50 pounds, is able to sit about six hours in an eight-hour day and is able to stand or walk about six hours in an eight-hour day.

The medical/vocational evidence shows that claimant is able to perform sedentary work. This includes employment as a ticket taker for a theater, as a parking lot attendant, or as a greeter for [REDACTED].

Based on this analysis of claimant's non-exertional and exertional impairments, as well as claimant's testimony, the department correctly denied claimant's MA-P application.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her COPD, allergies, and depression. Claimant has an active social life with her husband and performs many activities of daily living. The totality of the evidence in the record shows that claimant is able to perform unskilled sedentary work (SGA).

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: April 9, 2009

Date Mailed: April 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.

JWS/tg

cc:

