

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: 2009-10255
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 15, 2009
Kalamazoo 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 April 15, 2009, in Kalamazoo. Claimant personally appeared and testified under oath.

The department was represented by Laurie Boisse (ES).

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) or 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment to preclude her 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/SDA applicant (September 22, 2008) who was denied by SHRT (January 22, 2009) based on claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—38; education—9th grade; post high school education—GED and course work with [REDACTED] in building maintenance and culinary arts; work experience—laundry technician for [REDACTED], home help aide for DHS, auto parts worker for temporary employment services.

(3) The claimant has not performed substantial gainful activity (SGA) since June 2008 when she worked as a laundry technician for [REDACTED].

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

- (a) Unable to climb stairs;
- (b) Uses a cane on a daily basis;
- (c) Uses a push walker;
- (d) Status post spinal stenosis surgery ([REDACTED]);
- (e) Chronic pain in left leg;
- (f) Chronic low back pain.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

SHRT evaluated claimant's impairments using SSI Listings 1.02, 1.03 and 1.04.

SHRT determined that claimant is able to perform light unskilled work under Med-Voc Rule 202.20.

(6) Claimant lives with her sister and performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), cooking (sometimes), light cleaning; grocery shopping (needs help). The claimant uses a cane on a daily basis. Claimant uses a walker approximately twice a month. Claimant does not use a wheelchair or shower stool. Claimant does not wear braces. Claimant received inpatient hospital care in [REDACTED] to have spinal surgery.

(7) Claimant has a valid driver's license and drives an automobile approximately three times a month. Claimant is not computer literate.

(8) The following medical/psychiatric reports are persuasive:

(a) An [REDACTED] Medical Needs form (DHS-54A) was reviewed.

The physician reports that claimant does not have a medical need for assistance with her activities of daily living. The physician reports that claimant is able to perform other work. The physician notes that claimant was placed on restrictions and the work place would not take her back with restrictions.

(b) An [REDACTED] [REDACTED] consultation note was reviewed.

The neurosurgeon provided the following history:

Claimant has a chronic history of low back and bilateral leg pain. This dates back from many years. The pain is lumbar in nature, and the leg pain is down the entirety, front and back of both legs to the feet. It is worse with standing or walking. It is worse on the left than the right. Her back pain is worse than her leg pain. She has been seen in physical therapy without improvement.

* * *

The neurosurgeon provided the following assessment:

(a) Lumbar spinal stenosis;

- (b) Degenerative disc disease, L4-5, L5-S1.
- (c) A [REDACTED] consultation note was reviewed.

The physician provided the following history:

Claimant was a 37-year-old African American female with a past medical history significant for probable fibromyalgia and morbid obesity. Claimant reports that she has had back and leg problems for many years. There was no particular accident or injury. It was something that came on gradually and had gotten progressively worse over the years. Claimant reports that there are times when the pain is so severe, it will radiate into both of her legs and cause her to fall. She feels that the back pain is worse on the right side. However, the left leg symptoms seem to be more direct on the right. The pain will radiate around her back, into the groin, down the front of the thigh, into the medial ankle, lateral ankle anterior and posterior calf and posterior thigh. Essentially, this is the whole lower extremity, except for the foot. The pain also causes her feet to go numb. The symptoms tend to be more intermittent. The claimant also reports that there are times when she will have pain that radiates up her spine and also some occasional symptoms that will radiate in a very similar pattern into the right leg. She reports no recent changes in her bowel or bladder function, just frequent urinary urgency. Claimant has been off work since 6/11/2008 and reports no appreciable change in her back symptoms. Claimant also reports on her intake form that she has never had physical therapy, but she admitted that she had to have physical therapy in the past, in another part of the state, possibly the fibromyalgia and back pains. She also admits she has been taking Percocet above the prescribed dose.

The physician provided the following impressions:

- (1) A 37-year-old African American female with potential for left S1 radiculopathy due to lateral recess stenosis at the L5-S1 level;

- (2) L4-L5 and particularly L5-S1 facet joint arthropathy with degenerative disc disease;
- (3) Fibromyalgia;
- (4) Morbid obesity;
- (5) Asymptomatic heart murmur;
- (6) Tobacco abuse.

* * *

(9) Claimant does not allege disability based on a mental impairment.

(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. A recent medical report provides the following diagnoses: (1) lateral recess stenosis of the L5-S1 level; (2) L4-L5 and L5-S1 facet joint arthropathy with degenerative disc disease; (3) fibromyalgia; (4) morbid obesity; (5) asymptomatic heart murmur; (6) tobacco abuse. The physician who completed the [REDACTED] Medical Needs form reported that claimant is unable to return to her prior application as a laundry technician, but is able to work with certain restrictions (not specified).

(11) Claimant recently applied for federal disability benefits. Her application is currently pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has a residual functional capacity to perform a wide range of unskilled light work. The department denied benefits based on Med-Voc Rule 202.20.

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).

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 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 truth to show by a preponderance of the medical evidence in 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 consideration in 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, 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 12 months, and totally prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(b)(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.

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

STEP #4

The issue at Step 4 is whether claimant is able to do previous work. Claimant last worked as a laundry technician. This was heavy work.

The medical evidence of record establishes that claimant has several significant spinal impairments, including left S1 radiculopathy, including lateral recess stenosis at the L5-S1 level and L5-S1 facet joint arthropathy with degenerative disc disease. Claimant also had spinal surgery in [REDACTED].

Based on claimant's recent spinal surgery, she is unable to return to her previous work as a laundry technician because she is unable to perform the required lifting, standing and walking.

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 a preponderance of the medical/psychiatric evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

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

Second, claimant alleges disability based on spinal dysfunction, and a limited ability to walk, stand and sit. The physician who completed the Medical Needs form (DHS-54A) on [REDACTED] states that claimant can work with limitations.

Third, claimant testified that a major impediment to the return to work was her spinal dysfunction and spinal pain. 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 combination of impairments. Claimant performs several activities of daily living, drives on a regular basis and has an active social life with her sister. 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 able to work as a ticket taker for a theater, 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: May 13, 2009

Date Mailed: May 14, 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:

