

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: 2009-12875
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 6, 2009
Ingham 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 May 6, 2009, in Lansing. Claimant personally appeared and testified under oath.

The department was represented by Gayle Vail (AP Supervisor).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on May 6, 2009. Claimant waived the timeliness requirement so 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 (November 24, 2008) who was denied by SHRT (February 19, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.17 as a guide.

(2) Claimant's vocational factors are: age—47; education—11th grade; post high school education—none; work experience—cleaning homes and offices for a housekeeping company, cooked for the public schools and for a hospital.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when she worked as a house and office cleaner.

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

- (a) Heart dysfunction;
- (b) Diabetes;
- (c) Sleep apnea;
- (d) Poor eyesight.

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

OBJECTIVE MEDICAL EVIDENCE (February 19, 2009)

SHRT decided that claimant was able to perform unskilled light work under 20 CFR 416.967(d) and .967(a). SHRT evaluated claimant's eligibility using SSI Listings 3.01, 4.01, 9.01, 5.01 and 12.01. SHRT decided the claimant does not meet any of the applicable listings. SHRT denied disability based on 20 CFR 416.909 due to claimant's ability to perform unskilled light work.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), light cleaning, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. She does not wear braces. Claimant received inpatient hospital services in 2008 to treat claimant's heart dysfunction.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate. Claimant has five grandkids who live nearby. She sees her grandchildren on a regular basis.

(8) The following medical records are persuasive:

(a) An October 11, 2008 hospital admission notice was reviewed. The admission physical states the following background: Claimant is a 46-year-old African American female with coronary artery disease, status post stenting x2. The last one was in 2007. Diabetes, Type II and obstructive sleep apnea, hypertension, cocaine abuse in the past, comes in with chest pain, which has been going on and off for the past two weeks. Claimant is homeless and lives at [REDACTED]. She has been experiencing chest pain and difficulty breathing on and off for the last two weeks. Normally she will take Nitroglycerin, one to two tablets, after an episode of chest pain, which will take about 15 minutes for it to get better. Her chest pain is retrosternal as well as on the right, as well as on the left side of the chest with radiation to both arms. Today, she had a similar episode. She took four Nitroglycerin tablets, did not help with the chest pain and she decided to come into the Emergency Department. She denies any prolonged immobilization or travel. She denies any fever or flu-like symptoms. No sick contacts. No increased stress. No heavy exertional activity in the last few weeks. No trauma.

* * *

(b) An August 13, 2008 discharge summary was reviewed. It shows the following admitting diagnoses:

(1) Chest pain, rule out ACS;

- (2) UTI;
- (3) Diabetes Type II.

(c) Discharge diagnoses:

- (1) Chest pain, noncardiac;
- (2) Asymptomatic bacteria;

(9) Claimant alleges a mental impairment, but did not supply a recent clinical evaluation by a psychiatrist. There are no current probative psychiatric reports in the record. Claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

(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. The medical reports do establish claimant has coronary artery disease and is status post stenting x2. The last stent was placed in 2007. At the hearing, claimant submitted a report from her doctor (August 4, 2008) which states that claimant is diagnosed with CAD, chest pain, CAD of the native coronary artery, status post MI, status post PTCA and status post stent placement. Also diagnosed with diabetes and hyperlipidemia. Her doctor states she is totally unable to work. The Medical Source Opinion is not consistent with the great weight of the medical evidence, and will not be giving controlling weight.

At this time, however, there is no reliable medical evidence to establish a severe, disabling condition that totally prevents 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 based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform light unskilled work. The department evaluated claimant's impairments using SSI Listings 3.01, 4.01, 9.01, 5.01 and 12.01. The department decided that claimant does not meet any of the applicable SSI listings.

Based on claimant's vocational profile [younger individual approaching advanced age (47) with an 11th grade education and work experience as a cook and a housecleaner] the department denied disability benefits based on Med-Voc Rule 202.17.

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/SDA 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, 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, or has existed for 12 months and totally prevents all basic 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. Claimant does not allege disability based on the Listings.

However, SHRT evaluated claimant's eligibility based on SSI Listings 3.01, 4.01, 9.01, 5.01 and 12.01. SHRT decided that claimant does not meet any of the applicable 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 an office/home cleaner. This was medium work.

Based on the medical evidence of record, claimant is not able to perform medium work as a housekeeper which requires continuous standing and lifting.

Based on claimant's heart dysfunction, in combination with her diabetes and poor eyesight, she is not able to return to her previous job as a house/office cleaner.

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

First, the claimant alleges a mental impairment, but did not substantiate it with clinical evidence.

Second, claimant alleges disability based on heart dysfunction, shortness of breath, diabetes, stomach problems and a learning disability. The medical evidence of record shows that claimant has coronary artery disease, chest pain, status post myocardioinfarction condition, status post stent placement, diabetes and hyperlipidemia. Although her doctor states that she is totally disabled, this Medical Source Opinion is contrary to the great weight of the medical evidence in the record. The medical evidence, at this time, does not preclude sedentary employment.

Finally, claimant testified that a major impediment to return to work was chest pain and shortness of breath. 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/shortness of breath 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. Currently, claimant performs many activities of daily living and has an active social life with her grandchildren and children.

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].

Consistent with 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/SDA disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P, 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 8, 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:

