

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: 2009-13242
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 7, 2009
Bay 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 7, 2009 in Essexville. Claimant personally appeared and testified under oath.

The department was represented by Ron Lemmon (Social Services Manager).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on May 7, 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/Retro applicant (October 13, 2008) who was denied by SHRT (February 24, 2009) based on claimant's ability to perform past work as a medical records clerk. Claimant requests retro-MA for July, August and September 2008.

(2) Claimant's vocational factors are: age--59; education—high school diploma, post-high school education--none; work experience—medical records clerk, assembly line packaging worker for [REDACTED], office manager for [REDACTED] and chore services provider.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2004 when she was a medical records clerk.

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

- (a) Unable to sit more than 10 minutes;
- (b) Bilateral grip dysfunction;
- (c) Unable to bend, lift or walk normally;
- (d) Heart dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (FEBRUARY 24, 2009)

SHRT decided that claimant was able to perform her past work. SHRT evaluated claimant's eligibility using SSI Listings 4.01 and 1.01. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on her ability to perform past work under 20 CFR 416.920(e).

6) Claimant lives in a rented room and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming (needs help), laundry (needs help), and grocery shopping. Claimant uses a cane approximately 12 times a month. She does not use a walker, a wheelchair or a shower stool. Claimant wears braces on her right wrist approximately 12 times a month. Claimant received inpatient hospital services in 2008 and 2009 for her heart impairment.

(7) Claimant has a valid driver's license and drives an automobile approximately 10 times a month. Claimant is computer literate. Claimant has 2 grandchildren who live near her home and she sees them on a regular basis.

(8) The following medical records are persuasive:

- (a) A [REDACTED] narrative report was reviewed.

The [REDACTED] provided the following background:

Claimant has been established with me since January 2006. She has multiple medical diagnoses which include CAD, HTN, hyperlipidemia, diverticulitis, HO colon polyps, GERD, chronic low back pain, post surgical repair, right carpal tunnel syndrome, post surgical release but symptomatic again, left shoulder glenoid labral tear and supraspinatus tendonitis in right fourth trigger finger.

Because of her orthopedic complaints, claimant has many physical limitations. She is limited in her abilities to lift, carry, reach and grasp objects. Claimant is also limited in bending, squatting, and crawling and cannot sit, stand or work for greater than 30 minute duration. She is also limited in repetitive actions with her upper and lower extremities.

* * *

- (b) A [REDACTED] Report was reviewed. The physician provided the following background:

This is a 55-year-old who was seen initially on August 29, 2005, came in with a history that while working she twisted the low back and had leg pain, which happened in 2004. In 2005, she had surgery by [REDACTED] and discectomy was done with minor improvement. She has been having back pain. She was investigated and subsequently underwent L4-5, L5-S1 anterior fusion from which she is recovering slowly. I have been following her up for her lumbar spine. She has been complaining of bilateral hand numbness. She has been investigated and found to have bilateral carpal tunnel syndrome. On reviewing the entire chart, claimant had a previous history of a coronary stent.

* * *

(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. Claimant does not allege disability based on a mental impairment. Claimant did not provide 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. Recent medical evidence shows the following diagnoses: CAD, HDN, hyperlipidemia, diverticulosis, GERD, chronic low back pain with post surgical repair, right carpal tunnel syndrome with post surgical release, with symptoms, left shoulder glenoid labrial tear and supraspinatous tendonitis in right fourth trigger finger. Claimant's [REDACTED] states she is totally unable to work. This medical source opinion is contrary to the great weight of the medical evidence in the record and will not be given controlling weight.

(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 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 past work as a medical records clerk.

The department thinks claimant retains the Residual Functional Capacity (RFC) to perform light/sedentary work. Since claimants past work as a medical records clerk was sedentary, claimant retains the capacity to return to that work.

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).

A statement by a medical source that an individual is “disabled” or “unable to work” does not mean that disability exists for the purposes of the MA-P/SDA programs. 20 CFR 416.927(e).

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 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 at least 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, the department did review claimant's eligibility under SSI Listings 4.01 and 1.02. 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 previously worked as a medical records clerk for a doctor's office. This work was sedentary work.

The medical evidence of record establishes that claimant has had a heart stent placement and has had back surgery and carpal tunnel surgery. Although claimant is physically challenged, she is able to perform sedentary work.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to to other work.

Claimant has the burden of proof to show by the medical/psychological evidence in the record, that her mental/physical 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 carpal tunnel, heart dysfunction, CAD, HTN, hyperlipidemia, diverticulosis, GERD, low back pain, post surgical repair, right carpal tunnel syndrome, post surgical repair and tendonitis in the right fourth trigger finger. These conditions

prevent claimant from performing repetitive work that requires standing, lifting and bending. Although claimant has precluded from these work activities, the medical evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to her return to work was her shoulder, wrist and back pain. 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 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 lives alone and performs a significant number of activities of daily living, has an active social life with her grandchildren and drives an automobile approximately 10 times a month. Also, claimant is computer literate.

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]. Work of this type would afford claimant a sit/stand option.

Based on this analysis, the department correctly denied claimant's MA-P application, under 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 260/261.

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: August 28, 2009

Date Mailed: August 31, 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/sd

cc:

