

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: 2009-1377
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 in Mio on January 28, 2009. Claimant personally appeared and testified under oath.

The department was represented by Kim Wright (FIM).

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 (August 27, 2008) who was denied by SHRT

(October 16, 2008) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.13, as a guide.

(2) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

- (a) status post toe amputation May 2008;
- (b) status post toe amputation August 2008;
- (c) status post staph infection;
- (d) diabetes;
- (e) balance problem while walking due to loss of three toes on right foot;
- (f) depression.

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

[REDACTED]

SHRT reviewed claimant's eligibility under SSI Listing 9.08. Claimant does not meet the listing:

SHRT decided that claimant is able to perform light work under 20 CFR 416.967(b). SHRT denied MA-P eligibility using Med-Voc Rule 202.13.

(6) Claimant performs the following activities of daily living (ADLs): dressing, bathing, cooking (sometimes), light cleaning (sometimes), mopping (sometimes), vacuuming and grocery shopping (uses amigo cart). Claimant uses a cane on a daily basis. Claimant does not use

a walker, wheelchair, or a shower stool. Claimant does not wear braces on her arms, legs, neck or back.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is computer literate.

(8) The following medical records are persuasive:

(a)

[REDACTED]

[REDACTED]

[REDACTED]

(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. There is no psychiatric/psychological report in the records. Claimant did not provide a DHS-49D or a DHS-49E to show her residual mental 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. The medical/vocational records do show the following residual impairments: status post amputation of toes three, four and five of claimant's right foot due to a staph infection and gangrene. Claimant has difficulty walking due to the loss of three toes on her right foot.

(11) Claimant has applied for federal disability benefits at the Social Security Administration. An application is currently pending.

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 the claimant has the residual functional capacity (RFC) to perform unskilled light work. The department thinks that claimant's impairments do not meet/equal the intent or severity of Social Security Listing 9.08. Based on claimant's vocational profile

[REDACTED]

[REDACTED]

[REDACTED]

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 260/261.

"Disability," as defined by MA-P standards is the 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 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 conditions, age, education and 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 is 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).

The 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.

SHRT found that claimant meets disability and duration requirements which are *de minimus* requirements.

STEP 3

The issue at Step 3 is whether claimant meets the listing of impairments in the SSI regulations. Through evaluating claimant's eligibility under Listing 9.08 and determined that claimant does not meet the appropriate Listing.

Therefore, claimant does not meet the statutory eligibility test.

STEP 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Therefore, claimant meets the Step 4 eligibility 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 that she is unable to work based on a mental impairment: depression. The careful review of the psychological evidence in the record does not establish that claimant is totally unable to work based on depression. There are no psychological reports in the record. Claimant's podiatrist stated that she does not have a mental impairment.

Second, claimant states that she is unable to work because she has only two toes on her right foot, does not have good balance when she is walking, and is still treating the right foot for an infection.

The Medical Examination Report (DHS-49) presented by claimant's podiatrist does not state the claimant is totally unable to work based on the amputation of toes three, four and five.

The medical/vocational evidence of record shows the claimant is able to perform sedentary work. This includes employment as a ticket taker for a theatre, a parking lot attendant, [REDACTED], claimant is computer literate, and is able to perform work that requires the use of a computer. Based on this analysis of claimant's non-exertional and exertional impairments, as well as claimant's testimony under oath, the department correctly denied claimant's MA-P application.

In short, the Administrative Law Judge is not persuaded the claimant is totally unable to work based on the amputation of three toes on her right foot in 2008. Claimant currently performs many activities of daily living, has an active social life with her husband and two children, and is computer literate. The totality of the evidence in the record shows the 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. Also, claimant is not eligible for MA-P under Med-Voc Rule 202.13.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet the MA-P 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: February 9, 2009

Date Mailed: February 9, 2009

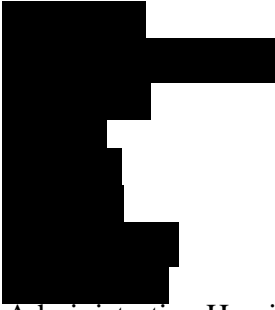
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final 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.

2009-1377/jws

JWS/db

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Administrative Hearings (2)