

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: 2009-14432  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 30, 2009  
Montmorency 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 June 30, 2009, in Atlanta. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Brenda Kann (FIM) and Susan Altman (FIS).

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 expected 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/retro/SDA applicant (November 5, 2008) who was denied by SHRT (March 17, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.13, as a guide. Claimant requests retro MA for August, September and October 2008.

(2) Claimant's vocational factors are: age--50; education--high school diploma, post-high school education--none; work experience--clerk for [REDACTED] retail store, potato washer for local farmer, and cook for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2008, when she worked as a clerk for [REDACTED].

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

- (a) Difficulty walking;
- (b) Stiffness;
- (c) Needs a follow-up MRI of the back;
- (d) Status-post back surgery (February 2009).

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

**OBJECTIVE MEDICAL EVIDENCE (March 17, 2009)**

SHRT decided that claimant was able to perform unskilled light work under 20 CFR 416.967(b). SHRT evaluated claimant's disability using SSI Listing 1.01. SHRT decided that claimant does not meet any of the applicable SSI listings. SHRT denied disability based on Vocational Rule 202.13 and claimant's ability to perform unskilled light work.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning (sometimes), vacuuming (sometimes), laundry (sometimes), and grocery shopping (needs help). Claimant does not use a cane or a wheelchair. She uses a walker approximately 15 times a month and a shower stool approximately 7 times a month. Claimant does not wear braces. Claimant did not receive

inpatient hospital care in 2008. She was hospitalized for two days in February 2009 for back surgery.

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

(8) The following medical records are persuasive:

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

The internist provided the following background:

Chief Complaints: arthritis, back pain and right leg numbness.

Claimant has a history of degenerative arthritis to her back since 2001. She did undergo a lumbar laminectomy in 2001. She states since then she has had progressive symptoms, and has been told she will need a three-level spinal fusion. She states over the past year she has developed right leg numbness and aching. She is on Vicodin Q/D for pain, Celebrex 200 mg Q/D for anti-inflammatory. She states her pain continues to radiate down the right leg more than the leg and is aggravated by coughing and sneezing. She states she has developed progressive urinary incontinence as well. She does do some leg lifting and range of motion exercises. She states she has not had her surgical intervention because of lack of insurance. She does not use an assistive device.

Claimant has not worked since October of 2008. She used to work at [REDACTED]. She stopped working because of her back. She is not able to stand or walk for long periods of time. She now lives by herself in a home. She does do household chores for brief periods. She is able to drive for short distances. She is able to cook and watch television. She occasionally will do gardening. She denies any real changes in her home activities. She does not do any shoveling or mowing but is able to rake. She can sit and stand for about 30 minutes. She cannot lift anything more than 10 pounds.

\* \* \*

The consulting internist provided the following conclusions:

- (1) Degenerative arthritis.

Per review of the chart, claimant has generative disc disease per imaging studies. Of concern is her development of hyperreflexia and secondary loss at L5-S1 on the right side. She did have difficulty doing orthopedic maneuvers. She does compensate with a wide-based, stiff-legged gait, but does remain relatively stable. There was no active radicular symptoms today. Of concern has been the urinary incontinence, which may be related to her back, but cannot be ruled out.

\* \* \*

- (b) A November 26, 2008 Medical Examination Report (DHS-49) was reviewed. The family practice physician provided the following current diagnoses:

- (1) Low back pain;
- (2) Abnormal MRI.

The family physician states that claimant is able to lift up to 10 pounds. She is able to stand/walk less than 2 hours in an 8-hour day and sit less than 6 hours in an 8-hour day. The physician states that claimant is totally unable to do grasping, reaching, pushing-pulling and fine manipulating. Claimant is unable to operate foot/leg controls.

The family physician states that claimant has a mental limitations involving sustained concentration.

\* \* \*

**Note:** This medical source opinion will not be given controlling weight because it is contrary to the great weight of the medical evidence in the record. See 20 CFR 416.927(c) or 20 CFR 416.927(e).

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any clinical psychological evaluations. 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 expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she has back pain, difficulty walking, stiffness,

and had back surgery in February 2009. The most recent clinical evidence is provided by [REDACTED] dated [REDACTED]. The consulting internist reported that claimant has degenerative disc disease and hyperreflexia. She also has sensory loss at L5-S1 on the right side. The consulting internist also reported that claimant has urinary incontinence. The consulting physician did not say that claimant is totally unable to work. Claimant's family physician did excuse claimant from all employment activities based on an inability to use her hands/arms. However, this medical source opinion will not be given controlling weight because it is contrary to the great weight of the medical evidence in the record.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application. Claimant filed a timely appeal.

(12) Claimant currently smokes 10 cigarettes per day, contrary to medical advice. Claimant has been a heavy smoker for 14 years.

## CONCLUSIONS OF LAW

### CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA 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 unskilled light work.

The department evaluated claimant's impairments using SSI Listing 1.01, as a guide. The department determined that claimant does not meet any of the applicable listings.

The department denied claimant's request for disability benefits based on Med-Voc Rule 202.13, as a guide.

**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).

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 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/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/SDA 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 disabled 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 (SGA) 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 at least 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(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 did review claimant's eligibility based on SSI Listing 1.01. SHRT decided that claimant does not meet an applicable listing.

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 last worked as a clerk for [REDACTED]. This was sedentary work.

The medical evidence of record establishes that claimant has low back pain and a history of degenerative arthritis, coupled with urinary incontinence. Although claimant's impairments do preclude her from heavy lifting, they do not preclude her from the sedentary work that she was performing for the [REDACTED] store.

Since claimant is able to perform unskilled sedentary work, she is able to return to her previous work at the [REDACTED] store.

**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 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 her degenerative arthritis and her inability to stand for long periods. Claimant's recent back surgery appears to be successful even though she is precluded from performing heavy lifting. Although claimant does have limitations based on her back impairments, 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 leg pain and numbness secondary to her back dysfunction. 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 combinations. Claimant performs a significant number of activities of daily living, has an active social life with her relatives and neighbors, and is able to drive an automobile approximately twice a month.

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 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/SDA application, under Step 5 of the sequential analysis, as presented above.

Finally, the Administrative Law Judge is not able to award disability benefits to claimant because she is acting against medical advice (AMA) due to continuing smoking, contrary to her physical health and the advice of her doctors.

#### 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: October 8, 2009

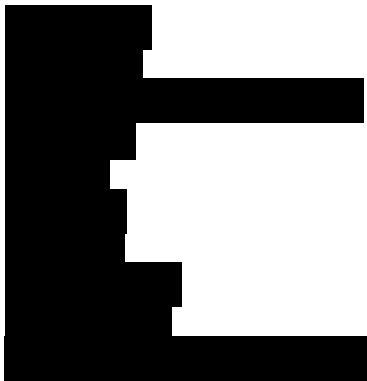
Date Mailed: October 12, 2009

**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.

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