

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: 2009-17694
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2009
Midland 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 4, 2009 in Midland. Claimant personally appeared and testified under oath.

The department was represented by Janice Post (FIS).

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/SDA applicant (October 6, 2008) who was denied by SHRT (April 21, 2009) based on claimant's failure to submit evidence of a severe impairment.

(2) Claimant's vocational factors are: age—49; education—11th grade, post-high school education--none; work experience—cashier for [REDACTED], a party store and for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when she was a cashier at [REDACTED]. Claimant is currently on medical leave from her [REDACTED] position.

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

- (a) Poor balance;
- (b) Memory dysfunction;
- (c) Has difficulty counting change;
- (d) Status post stroke (2008).

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

OBJECTIVE MEDICAL EVIDENCE (APRIL 21, 2009)

SHRT decided that claimant was not disabled because of insufficient evidence. SHRT evaluated claimant's disability based on SSI Listings 11.01, 6.01 and 12.01. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on insufficient medical evidence.

SHRT requested a complete independent physical consultative examination by an internist.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, vacuuming (sometimes), laundry and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately twice a month. Claimant is computer literate.

(8) The following medical reports are persuasive:

(a) An [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] was reviewed. The neurologist provided the following history:

Claimant returns with her mother. She went through her tranesophageal echocardiogram and this revealed no evidence of an embolic source. Likewise, a carotid ultrasound revealed no lesions of surgical significance. Claimant's ultimate diagnosis remains somewhat in question. My suspicion is that she had some sort of a hypertensive event which may have produced watershed infarctions which are fairly diffusely represented on the MRI. She has some balance problems and visual processing problems at times, per her report. The possibility of multiple sclerosis still exists. The possibility of vasculitis has most likely given her recent lab studies. Furthermore, she experiences no fever, chills, psychosis or any other representations of systemic CNS vasculitis.

I explained all of these ambiguities to the patient and her mother. Claimant is not able to work presently and may require some long-term disability because the diagnosis is somewhat still in question, and because she is thus far unwilling to proceed with lumbar puncture for CSF analysis, I talked to the claimant about perhaps a university referral for additional input.

* * *

The neurologist provided the following impressions:

- (1) Probable watershed infarct;
- (2) Possible multiple sclerosis.

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

Thank you for allowing me to see claimant in neurologic consultation concerning some balance problems and some right-sided paresthesias. She says these problems have been going on "for awhile." She seems to indicate that these problems have been present for a number of months. She has had, what she describes as a "progressive" problem with balance for one month. She has not been following. An MRI

was performed at your direction and this revealed patchy areas of hyperintensity in the predominately right posteroparital occipital region. These could be demyelinating or perhaps ischemic in origin. A study was performed without contrast. Interestingly, claimant had a total abdominal hysterectomy, bilateral salpingo-oophorectomy in April of this year due to what she described as "fibroids" in her uterus. She said the surgery was otherwise uneventful. She has had problems with bladder control, at least in terms of urinary urgency, with occasionally urinary incontinence for awhile. She also says she has had pain in the left shoulder from what sounds like an assault or some other kind of physical injury a number of years ago. She also describes vision changes that are menstrual. Otherwise, her health history is notable only for anxiety. She has had Klonopin which has been given to her for treatment of this anxiety.

* * *

IMPRESSION:

Claimant has nondescript changes predominantly in the right perietooccipital region, which may be ischemic versus demyelination in character. I would recommend an MRI of the brain with contrast to help make this decision. We might need to proceed with lumbar puncture, particularly if the tissue of demyelating disease is still not clarified.

* * *

(c) A [REDACTED]
Notice was reviewed.

The physician states claimant is not to work until further notice.

No clinical reports were cited by the physician at this time.

* * *

(9) There is no probative psychiatric evidence in this record at the present time. Claimant reports memory dysfunction, but this has not been clinically corroborated. Also, 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. A consulting neurologist provided the following impressions: (1) Probable watershed infarcts; (2) Possible multiple sclerosis. A physician provided claimant with an indefinite off-work notice. However, no clinical basis for this unlimited work deferral was provided at this time.

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

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 normal Residual Functional Capacity (RFC).

The department thinks that claimant's medical records do not clearly establish an impairment which meets the department's severity and duration requirements. The department recommended an independent consultative examination by an internist.

NOTE, claimant decided to provide this information in conjunction with the second application.

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 his 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 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

(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. Using reliable, uncontroverted medical evidence, claimant must establish an impairment which is expected to result in death, or has existed for at least 12 months, and totally prevents all current 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 evaluate claimant's disability based on Listings 11.01, 6.01 and 12.01. 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 cashier for [REDACTED]. This was sedentary work. The medical evidence of record establishes that claimant may have had a stroke in 2008. The etiology of claimant's

stroke is yet to be determined. A physician did issue claimant an indefinite [REDACTED]. However, this medical source opinion is not supported by the preponderance of the medical evidence in the record.

Claimant reports that she has difficulty making change. Since this is a part of the function of her work as a cashier, she is not able to return her work as a cashier at [REDACTED].

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 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. There are no recent, persuasive psychiatric reports in the record. Also, claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on a stroke in 2008, balance issues, memory dysfunction and an inability to count change. The medical records do not clearly establish a medical diagnosis that would explain claimant's reported symptoms. There is no persuasive medical evidence in the record that claimant has a severe impairment that totally prevents her from working.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of physical impairments.

Claimant currently performs a significant number of activities of daily living, has an active social life with her children and her parents, drives an automobile twice a month and 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 to work as a ticket taker for a theatre 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: October 12, 2009

Date Mailed: October 13, 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:

