

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: 2009-17718
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 24, 2009
Shiawassee 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 24, 2009, in Owosso. Claimant personally appeared and testified under oath.

The department was represented by Janet Schuster (Community Resource Coordinator) and Debra Kelly-Wheeler (ES).

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)?
- (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 10, 2008) who was denied by SHRT (April 16, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—45; education—10th grade, post-high school education—GED, claimant is a [REDACTED] with the State of Michigan; work experience—currently employed at a doctors office in [REDACTED] as a [REDACTED] [REDACTED]. When she worked 40 hours a week she earned approximately \$909 gross. She has recently been reduced to 32 hours per week.

(3) Claimant is currently performing Substantial Gainful Activity (SGA) as a Certified Medical Assistant.

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

- (a) Status post brain surgery;
- (b) Eye dysfunction;
- (c) Diabetes mellitus;
- (d) Hypothyroidism;
- (e) Bilateral edema in the legs;
- (f) Chronic headaches;
- (g) Status post surgery for removal of ovaries;
- (h) Status post hernia surgery;
- (i) Possible Multiple Sclerosis.

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

OBJECTIVE MEDICAL EVIDENCE (APRIL 16, 2009)

SHRT decided that claimant was able to perform light, unskilled work. SRHT evaluated claimant's eligibility using all the SSI Listings at 20 CFR 404, Subpart P, Appendix. SHRT decided that

claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on claimant's ability to perform light, unskilled using Med-Voc Rule 202.20 as a guide.

(6) Claimant lives with her mother for whom she is providing care. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces. Claimant was hospitalized in 2008 for surgery to remove an ovary. She was hospitalized in 2009 for a hernia repair surgery.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A January 9, 2009 consulting internal medicine diplomate was reviewed.

The consulting internist provided the following background:

Claimant is a 44-year-old white female who has been well until she underwent a hysterectomy in 2004. She subsequently complained of diplopia, periorbital edema, and headaches. She described the headaches as pressure like someone is sitting on her head. At that time she underwent a CT scan of the sinus areas and was found to have quite a few tumors in the sinuses. She subsequently underwent referral to the [REDACTED], and saw [REDACTED] there. He subsequently took her to surgery on [REDACTED] and removed the tumors. He then reevaluated her in [REDACTED] of that year only to find that the tumors had reoccurred. She underwent surgery again on [REDACTED]. She is now continuing with [REDACTED]. He subsequently moved to [REDACTED]. Today she still has the periorbital edema. She also complains of continuous headaches.

Claimant is a known diabetic with a history of hypothyroidism and pituitary adenoma.

* * *

The consulting internist provided the following impressions:

- (1) Diabetes mellitus;
- (2) Hypothyroidism;
- (3) Pituitary adenoma;
- (4) Sinus tumors that were removed by x2;
- (5) Bilateral carpal tunnel syndrome;
- (6) Degenerative joint disease involving left knee;
- (7) Morbid obesity.

* * *

- (b) A January 2, 2009 psychological evaluation was reviewed.

The PhD psychologist provided the following background information:

Claimant is a 44-year, 11-month old woman referred by Shiawassee County Department of Human Services (DHS) for a psychological evaluation. No records of any kind were available at the time of this evaluation. That is unfortunate, because claimant reported that she has had 2 brain surgeries, and also has other medical problems. Claimant stated that in 2005 she was diagnosed with “a huge muco-cell mass in my sinuses.” She underwent surgery at that time to remove the 3 masses in her sinus cavity, which also had moved into her frontal lobes. However, by April 2005, these masses had reappeared and she underwent a second surgery. She stated that she continues to have severe, daily headaches, although the masses have not returned. However, claimant now has been diagnosed with a pituitary adenoma. Additionally, Rebecca has diabetes, hypothyroidism, peripheral edema and glaucoma.

* * *

Claimant that she was employed by [REDACTED] for [REDACTED] prior to the onset of her medical problems. However, because she was missing so much time, she was fired from her job “so they would not have to continue my health insurance.” Claimant, as a result, has not had ongoing comprehensive medical treatment because she has been unable to afford it. She applied to DHS for medical assistance due to these problems. For example, claimant stated that she needs a MRI of the pituitary gland and treatment for that condition, but has been unable to afford the test or the treatment.

* * *

The PhD psychologist provided the following diagnostic impressions:

Axis I—Adjustment disorder, with mixed emotional features.

* * *

Axis V/GAF—62.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P because she needs medical benefits in order to obtain her insulin and other medical services which she is unable to afford on her own.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled light work. The department thinks that claimant is not eligible for Medicaid benefits based on Med-Voc Rule 202.20 as a guide.

The department considered claimant's impairments using the SSI Listings at 20 CFR 404, Subpart P, Appendix.

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. "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, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The evidence of record shows claimant is currently employed as a [REDACTED] [REDACTED] at a doctor's office in [REDACTED]. Claimant currently works approximately 75 hours a week and earns approximately \$909 gross per pay period.

Claimant's current income meets the SSA definition of substantial gainful employment which is currently set at \$900 a month.

Therefore, claimant is disqualified for MA-P benefits due to her current employment as a [REDACTED] at a doctor's office in [REDACTED].

Based on claimant's employment, the sequential analysis must end at Step 1 based on 20 CFR 416.920(a).

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 based on her current substantial gainful employment as a Certified Medical Assistant.

Accordingly, the department's denial of claimant's MA-P application is, hereby,
AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 24, 2009

Date Mailed: September 25, 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

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