

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: 2009-17926
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 2, 2009
Monroe 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 July 2, 2009 in Monroe. Claimant personally appeared and testified under oath.

The department was represented by Mark Homan (FIM) and Sondra Brooks (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) 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 3, 2008) who was denied by SHRT (April 15, 2009) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requests retro MA for August, September, and October 2008.

(2) Claimant's vocational factors are: age—46; education—10th grade; post high school education—GED; work experience—baker for [REDACTED] restaurant, loan officer for a mortgage company.

(3) Claimant has not performed substantial gainful activity (SGA) since December 2007 when she worked as a baker for [REDACTED] restaurant.

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

- (a) Enlarged heart;
- (b) Leaky heart valve;
- (c) Osteoarthritis of the spine and hips;
- (d) Leg dysfunction;
- (e) Fibromyalgia;
- (f) Bilateral carpal tunnel.

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

OBJECTIVE MEDICAL EVIDENCE (April 15, 2009)

SHRT decided that claimant was able to perform unskilled light work. SHRT evaluated claimant's impairments using all SSI Listings in 20 CFR 404, Subpart P, Appendix. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on 20 CFR 416.967(b) due to claimant's ability to perform unskilled light work.

(6) Claimant lives with her minor daughter and adult daughter and performs the following Activities of Daily Living (ADLs): dressing (needs help), and bathing (needs help). Claimant uses a cane approximately ten times a month. She uses a shower stool on a daily basis and wears braces on her wrists on a daily basis. She does not use a walker or a wheelchair.

Claimant received inpatient hospital care in 2008 for heart dysfunction. Claimant received inpatient hospital care in 2008 and 2009 for heart dysfunction.

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

(8) The following medical report is persuasive:

(a) A November 11, 2008 Medical Examination Report (DHS-49) was reviewed. The physician provided the following current diagnoses: Fibromyalgia, irritable bowel syndrome, migraines and hyperlipidemia.

The physician reported the following work limitations: Claimant is able to lift ten pounds occasionally. She is able to stand/walk less than two hours in an eight-hour day. She is able to sit less than six hours in an eight-hour day. Claimant is able to use her hands/arms for normal activities except pushing-pulling. Claimant is not able to use her feet/legs to operate foot controls.

The physician notes the following: Chronic back and leg pain could make it difficult to do repetitive work or heavy work.

* * *

(9) Claimant does not allege a mental impairment as the basis for her disability.

Claimant did not submit any clinical evidence from a psychologist. Claimant did not provide a DHS-49D or 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 heart dysfunction, osteoarthritis of the spine/hips, fibromyalgia and bilateral carpal tunnel. The Medical Examination Report (DHS-49), dated November 11, 2008 provides the following diagnoses: Fibromyalgia, irritable bowel syndrome, migraines and hyperlipidemia. The physician who provided the DHS-49D did

not state the claimant was totally unable to work. She did report that claimant's chronic back and leg pain would make it difficult for her to do repetitive or heavy work.

(11) Claimant recently applied for SSI benefits from the Social Security Administration. Her application is currently pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform a wide range unskilled light work.

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

The department decided that claimant does not meet any of the applicable listings.

The department denied benefits because claimant is able to perform light work under 20 CFR 416.967(b).

The department notes that claimant was admitted in September 2008 due to cardiomyopathy. In November 2008, she had a heart murmur and positive tender points, but no other abnormal findings. A Cardiac MRI in November 2008 showed mild left atrium and left ventricular enlargement and basically a normal ejection fraction (EF) at 68% (page 3). An echo dated January 2009 showed an EF of 50%-60%, and basically showed no significant abnormalities (pages 1-2).

The department further noted that claimant's treating physician has given less than sedentary work restrictions, based on claimant's physical impairments. However, the Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence, and per 20 CFR 416.927(c) and (d), will not be given controlling weight.

* * *

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 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 purposes.

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, the 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.

The department evaluated claimant's impairments using the SSI Listings. Claimant does not meet the applicable SSI 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 last worked as a baker at [REDACTED] restaurant. This work was medium work.

The claimant's heart dysfunction in combination with her chronic back and leg pain would make it difficult for her to do the required standing and lifting as a baker.

Since claimant is no longer able to work as a baker, she is unable to return to her previous work. 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 a preponderance of 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. Claimant did not submit any clinical evidence of a severe mental illness. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on heart dysfunction, osteoarthritis of the spine and hips, leg dysfunction, fibromyalgia and bilateral carpal tunnel syndrome. Claimant's treating physician has given less than sedentary work restrictions based on claimant's physical impairments. However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence and will not be given controlling weight. Although claimant is precluded from heavy lifting and constant standing, the medical evidence of record does not show the claimant is totally unable to perform any work.

Third, the claimant testified that a major impediment to her return to work was her osteoarthritis pain in her spine and hips and her bilateral carpal tunnel syndrome pain. 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 combination of impairments. Claimant performs several activities of daily living, has an active social life with her daughters and drives approximately 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 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 at work.

Based on this analysis, the department correctly denied claimant's MA-P/SDA 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/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 30, 2009

Date Mailed: November 2, 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.

JWS/tg

2009-17926/jws

cc:

