

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: 2009-18505
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2009
Genesee 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 on July 29, 2009 in Flint. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED].

The department was represented by Camille Koger (ES).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on August 3, 2009. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge issued the decision below.

ISSUE

(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 (January 17, 2008) who was denied by SHRT (May 5, 2009) due to claimant's ability to perform other work.

(2) Claimant's vocational factors are: age—51; education—11th grade, post-high school education—none; work experience—scanned books for a book factory; worked at a food seasoning factory; was a parts packer for an automobile company.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when she worked for a book factory.

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

- (a) Constant pain;
- (b) All over body pain;
- (c) Osteoarthritis;
- (d) Rheumatoid arthritis;
- (e) Hypertension/HNT;
- (f) Coronary dysfunction;
- (g) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 5, 2009)

SHRT decided that claimant was able to perform other work. SHRT evaluated claimants' impairments using all SSI Listing at 20 CFR 404.

SHRT decided claimant does not meet the applicable Listing.

(6) Claimant lives with her daughter-in-law and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), grocery shopping (needs help). Claimant uses a cane on a daily basis. She uses a walker 7 times a month. She does not use a wheelchair or a shower stool. She does not wear braces. Claimant received inpatient hospital care for heart dysfunction in 2008. She received inpatient for leg and back pain in 2009.

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

(8) The following medical records are persuasive:

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

The cardiologist provided the following background: claimant is a 59 year-old African American female with past medical histories significant for high blood pressure, depression and angina. Claimant has had multiple admissions in the Emergency Room complaining of chest pain; her last admission was 2 days ago. At the time of the evaluation, claimant complained of precordial chest pain, mild to moderate in intensity, without radiation, sometimes associated with exertion. However, she is still smoking at this time and has a history of cocaine abuse.

The cardiologist provided the following assessment:

- (1) Anginal chest pain requiring multiple Emergency Room evaluations.
- (2) History of high blood pressure.
- (3) History of depression.

(b) A [REDACTED] narrative evaluation was reviewed.

The orthopedic physician provided the following background.

Claimant gives a history of left knee arthroscopy out of state 3 years ago for reasons having to do with either cartilage or ligament type issues. Following arthroscopy, she had knee infection and required another surgery. She was on antibiotics for about 2 months, and has had soreness in her left knee ever since. Current status shows that her ambulation tolerance is significant or decreased. She uses a cane for ambulation. She has various other joint complaints, which are attributed to rheumatic arthritis, gout and osteoporosis. Her primary complaint is left knee. She is also sometimes symptomatic at rest although pain with weight bearing and ambulation is the primary complaint.

The orthopedic physician provided the following:

The only effective surgery recommended at this point is joint replacement surgery, but her health plan will not cover that type of inpatient procedure. There is nothing that can be accomplished arthroscopically in this knee. She should be considered for SU parts injections, so we will order the product and get her scheduled for a series of injections.

* * *

- (c) A December 8, 2008 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: Left knee pain. The physician did not note any lifting limitations. The physician reported that claimant is able to stand and/or walk less than 2 hours in an 8 hour day. She is able to sit less than 6 hours in an 8 hour day. The physician reported that claimant is totally unable to use her hands/arms. She is totally unable to use her feet/legs to operate foot controls.

- (d) An [REDACTED] narrative report was reviewed.

The physician provided the following background:

BACK SYMPTOMS: the onset was gradual, 4 years ago. There was no precipitating event. The location of the pain was in the left lower lumbar region. The quality is sharp and severe, pain is described as sharp and it is a 5 on a scale of 1-10.

* * *

Associated symptoms include stiffness, left lumbar paraspinal symptoms. Overall, the symptoms have been

worsening over the last few months. Prior evaluation for this problem has included an abnormal MRI scan of the lumbar spine.

* * *

KNEE: The onset was gradual, to 2 years ago. Symptoms involve both knees and anteriorly, the left more so than the right, both knees posteriorly, the left more so than the right. The pain is sharp and the severity is moderate, and it is a 5 on a scale 1-10. The duration is continuous. The symptoms are worsening. There is some difficulty going up and down stairs, difficulty walking on level ground, able to walk less than 5 blocks.

* * *

The physician provided the following assessment:

Back pain low; arthritis lower leg
(fibula)(knee)(patella)(tibia)/bilateral; obesity.

(9) There are no probative psychological/psychiatric reports in the record. Also, claimant did not 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. While it is true that the medical reports do show that claimant has significant arthritis in both knees, and has difficulty walking, this information does not establish that claimant is totally unable to work.

(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 continues to smoke against medical advice.

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 other work.

The department evaluated claimants' impairments using the SSI Listings at 20 CFR 404, Subpart P.

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 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 medical 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.

Claimant must establish an impairment which is expected to result in death, has existed for a continuous period of 12 months, and prevents all basic work activities.

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 *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 alleges that she meets Listing 14.00. SHRT evaluated claimant's eligibility using the SSI Listings and decided that claimant does not meet the 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 book scanner at a book factory. This was sedentary work. The medical evidence submitted for review in this matter is weak and unpersuasive. While it is clear that claimant has heart dysfunction and leg dysfunction (due to arthritis), these 2 conditions taken in combination, do not prevent all basic work activities.

The medical evidence of record does not establish that claimant is unable to return to her previous sedentary work at the book factory.

Since claimant is able to return to her previous work, she does not meet 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 mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental disorder: depression. Claimant did not submit any psychological/psychiatric evidence to establish either diagnosis. Also, claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on heart dysfunction and osteoarthritis of her knees and legs. The medical evidence of record is weak and contradictory and unpersuasive. The cardiologist who submitted a report (September 29, 2009) provided a diagnosis of anginal chest pain requiring multiple hospital emergency room evaluations, a history of high blood pressure and a history of depression. These diagnoses do not qualify claimant for disability benefits. The orthopedic specialist provided a diagnosis of osteoarthritis of the left knee. The physician stated that the most effective treatment was joint replacement surgery. The orthopedic physician's report is not sufficient to establish disability either.

Third, claimant testified at the hearing that a major impediment to her return to work was all of her body pain, arthritis pain and angina. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P 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 currently performs many Activities of Daily Living, has an active social life with her daughter-in-law. 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 at a theatre, as a parking lot attendant, and as a greeter at [REDACTED].

Claimant is not eligible for disability benefits because she smokes against medical advice.

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: March 12, 2010

Date Mailed: March 15, 2010

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

2009-18505/JWS

cc:

