

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: 2009-20285  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 23, 2009  
Lapeer 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 23, 2009 in Lapeer. Claimant personally appeared and testified under oath.

The department was represented by Ann Chapaton (Program Manager).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on June 23, 2009. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

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 (December 15, 2008) who was denied by SHRT (May 13, 2009) based on claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.18 as a guide. Claimant requests retro-MA for September, October and November 2008.

(2) Claimant's vocational factors are: age—46; education—9<sup>th</sup> grade, post-high school education--GED; work experience—line worker for [REDACTED] and miscellaneous assembly jobs.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since [REDACTED] when she worked on an assembly line at [REDACTED].

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

- (a) Chronic bilateral leg numbness;
- (b) Neck dysfunction;
- (c) Uses a cane;
- (d) Spinal spurring;
- (e) Spinal stenosis;
- (f) Multiple sclerosis.

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

**OBJECTIVE MEDICAL EVIDENCE (MAY 13, 2009)**

Claimant has a history of multiple sclerosis diagnosed in 12/2007. An MRI of the brain confirmed demyelinating disease (page 33). On 7/10/2008, her neurologist noted motor exam being normal, strength and her coordination were intact. She also had a normal

gait (page 25). According to claimant, she shops, drives and does light housework (pages 44-47).

**ANALYSIS:** The objective medical evidence present does not establish a disability at the Listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of light work.

\* \* \*

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing (sometimes), light cleaning, mopping (sometimes), vacuuming (sometimes), laundry (sometimes) and grocery shopping (sometimes). Claimant uses a cane on a daily basis. She does not use 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 12 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) An [REDACTED] was reviewed.

The radiologist provided the following impressions based on a MRI of the brain:

(1) Abnormal study, demonstrating bilateral deep white matter lesion, some improved, namely left occipital, but with new lesions in the central temporal lobes on both sides.

(2) Small vascular blush inferior frontal pole on the left, unchanged from prior study, in retrospect most consistent with venous angioma.

(3) Not mentioned above, prominence of the pituitary gland, correlate clinically.

\* \* \*

(b) A January 22, 2009 Medical Examination Report (DHS-49) was reviewed.

The neurologist provided the following current diagnoses:

Early relapsing and remitting multiple sclerosis.

The neurologist provided the following limitations. Claimant is able to lift less than 10 pounds occasionally. She is able to stand/walk less than 2 hours in an 8 hour day; she is able to sit less than 6 hours in an 8 hour day.

Claimant is able to use her hands/arms for fine manipulating. She is not able to use them for simple grasping, reaching, pushing/pulling. She is not able to use her feet/legs to operate foot controls.

The neurologist also reports the following symptoms: Leg numbness; tingling in the fingers; gets cramps in her toes when she stands.

\* \* \*

(9) Claimant does not allege disability based on a mental impairment as the basis for her disability. There are no clinical reports prepared by a psychologist or a psychiatrist to establish an acute (non-exertional) mental condition, expected to prevent claimant from performing all customary work functions for the required period of time. Also, 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 multiple sclerosis, bilateral numbness in the legs, neck dysfunction, spinal spurring, spinal stenosis, and that she uses a cane. The Medical Examination Report (DHS-49) completed by the neurologist states that claimant is able to lift less than 10 pounds, able to stand/walk less than 2 hours in an 8 hour day and able to sit less than 6 hours in an 8 hour day. He reports that claimant has some restriction in her ability to use her hands/arms, but she is able to use her hands for fine manipulating. The neurologist states claimant is unable to use foot controls. The current probative medical evidence does not

establish that claimant is totally unable to work based on her combined exertional impairments. She does have a limited ability to lift, however.

(11) Claimant recently applied for federal disability benefits from the Social Security Administration. Social Security denied her application. 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 is able to perform light, unskilled work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department thinks the medical evidence of record shows claimant retains the capacity to perform a wide range of light work. Based on claimant's vocational profile (younger individual, 9<sup>th</sup> grade education, and an unskilled work history) the department denied MA-P using Med-Voc Rule 202.18. SDA was denied using PEM 261 because the nature and severity of claimant's impairments do not preclude light work activity for 90 days.

### **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 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 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.

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 an assembly line worker for [REDACTED]; this was medium work.

The medical evidence of record establishes that claimant has multiple sclerosis and has difficulty standing and lifting for long periods of time. Since her prior job as an assembly line worker required constant standing and frequent lifting, she is unable to return to that 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 thinks she is disabled based on an unspecified mental impairment. However, there are no clinical reports from a psychiatrist or psychologist in the record. Also, claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functioning capacity.

Second, claimant alleges disability based on her multiple sclerosis, neck dysfunction, spine dysfunction and stenosis. Although claimant is precluded from heavy lifting and constant standing, the medical evidence in the 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 numbness and spinal 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 combined impairments. Claimant currently performs a significant number of Activities of Daily Living, has an active social life with her son and granddaughter, and drives an automobile approximately 12 times 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 at 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, based on Step 5 of the sequential analysis, as presented above. Finally, the

Administrative Law Judge is not able to allow disability benefits to claimant because she is acting against medical advice by continuing to smoke in spite of the fact that she has multiple sclerosis.

**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: September 28, 2009

Date Mailed: September 29, 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:

