

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: 2009-21934
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 14, 2009
Ogemaw 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 October 14, 2009 in West Branch. Claimant personally appeared and testified.

Claimant was represented by [REDACTED].

The department was represented by Joey Marshall (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on October 26, 2009. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the ALJ 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 (February 9, 2009) who was denied by SHRT (May 29, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. SHRT relied on 20 CFR 416.920(c). Claimant requests retro MA for November and December 2008 and January 2009.

(2) Claimant's vocational factors are: age—49; education—9th grade; post high school education—GED and one semester at [REDACTED] (paralegal major); work experience—daycare assistant, prep cook for [REDACTED]; certified nurse's aide for [REDACTED]

(3) Claimant has not performed substantial gainful activity since 2007 when she was a teacher's assistant for a daycare company.

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

- (a) Back pain;
- (b) Diabetic neuropathy in both feet;
- (c) Status post surgery of the pancreas.
- (d) Joint pain in her neck, back, shoulders and knees.

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

OBJECTIVE MEDICAL EVIDENCE (May 29, 2009):

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's impairments using SSI Listings 9.01, 4.01, 1.01, and 3.01. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied

disability based on 20 CFR 416.920(c), due to lack of severity and duration.

(6) Claimant lives with her mother and performs the following Activities of Daily Living (ADLs): Dressing, bathing, cooking, dish washing, light cleaning, and mopping, vacuuming, laundry (needs help) and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower stool. She does not wear braces. Claimant did not receive inpatient hospital services in 2008. She was hospitalized at the [REDACTED] for seven days for a MERSA infection.

(7) Claimant has a valid driver's license and drives an automobile approximately ten times a month. Claimant picks up her nieces at their daycare center. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A February 12, 2009 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnoses: pancreatic mass, pancreatitis, diabetes mellitus-II, hypertension, obesity, nicotine abuse and***(illegible).

The physician stated that claimant had no physical limitations, except that she was unable to do extensive lifting.

(b) A [REDACTED] consult was reviewed.

The internist provided the following background.

We had the pleasure of seeing claimant today in consultation in the [REDACTED] at the [REDACTED] for evaluation of a newly diagnosed mass in the tail of her pancreas. As you know, claimant is a 48-year-old female with comorbidities that include morbid obesity, a remote history of anemia and diabetes diagnosed approximately three years ago, who

presents after recently presented with the acute onset of epigastric and left flank pain. She states that she had been in her usual state of health until approximately two months ago when she had the sudden onset of left flank pain. This resolved rather quickly, until January 16, when she presented with similar pain, but which was increased intensity. At this time, it was also associated with some emesis and she was urgently seen in the emergency room on January 16. Non-contrasted renal stone protocol CT scan obtained at that time revealed a 7 cm hyper dense mass within the tail of her pancreas, which appeared to be abutting the superior fold of the kidney and the left adrenal gland and the interior fold of the spleen.

* * *

The consulting physician provided the following assessment:

On assessment, claimant is a 48-year-old female who presents with a distal pancreatic mass concerning for a neoplasm and less likely pancreatic pseudo cyst. We feel that she needs to undergo a pancreatic protocol CT with IV contrast for better evaluation of this mass, its relationship to adjacent structures, and evaluation for possible metastatic disease.

* * *

The consulting physician did not report any work limitations.

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

There are no probative psychiatric reports in the record. Claimant did not provide DHS-49D or DHS-49E to establish a mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. The medical reports do establish that claimant is unable to lift heavy amounts. Other than a lifting restriction, claimant's family practitioner states that she has no physical limitations.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application; claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform normal work activities. The department evaluated claimant using SSI Listings 9.01, 4.01, 1.01, and 13.01. The department decided that claimant does not meet any of the applicable listings.

The department denied claimant's request for MA-P/SDA benefits because claimant did not establish an impairment which meets the severity and duration

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 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 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 is expected to result in death, or has existed for 12 months, and/or totally prevents all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity and duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

However, SHRT evaluated claimant's eligibility based on Listings 9.01, 4.01, 1.01, and 13.01. SHRT decided that 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 was last employed as a teacher's assistant for a daycare center. This was sedentary work.

Based on the medical evidence of record, there is no medical reason why claimant could not return to her work as a daycare assistant.

Therefore, claimant 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/psychiatric 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 is no psychiatric evidence in the record to establish a mental impairment. Claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments: back pain, diabetic neuropathy and status post pancreatic surgery. A recent evaluation by claimant's family physician states that claimant has normal functional abilities except that she is not to perform extensive lifting.

Third, claimant alleges disability based on pain in her neck, back, shoulders and knees. 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. Currently, claimant performs many activities of daily living and has an active social life with her mother and her young nieces. In addition, she drives an automobile approximately ten 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 unskilled sedentary work (SGA). In this capacity, she is able to work as a ticket taker for a theater, as a parking lot attendant 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: January 11, 2010

Date Mailed: January 12, 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 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.

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cc:

