

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: 2009-24545
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 1, 2009
Eaton 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 1, 2009, in Charlotte. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Mellie Harvey (AP worker).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was submitted to the State Hearing Review Team (SHRT) on October 6, 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 made the final 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)?

(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/retro applicant (September 30, 2008) who was denied by SHRT (June 17, 2009) based on claimant's ability to perform medium work. SHRT relied on Med-Voc Rule 203.26 as a guide. Claimant requests retro MA for June, July and August 2008.

(2) Claimant's vocational factors are: age—38; education—10th grade; post high school education—none; work experience—assistant manager for tobacco shop, cashier at [REDACTED] and telephone order taker at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2008 when she was an assistant manager at a tobacco shop.

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

- (a) Back dysfunction;
- (b) Unable to lift;
- (c) Hypertension (HTN);
- (d) Forgetfulness;
- (e) Elevated cholesterol;
- (f) Shortness of breath (SOB);
- (g) Chronic fatigue.

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

OBJECTIVE MEDICAL EVIDENCE (June 17, 2009)

Claimant was hospitalized in 6/2008 due to symptoms of weakness. All specialized testing was normal. In 12/2008, her blood pressure was normal. She ambulates without difficulty. She had a normal heart examination. (Pages 13-15 and 34-26.)

MENTAL:

Claimant had a psychiatric evaluation while hospitalized in 6/2008 relating to her physical condition. Her mental status was found to be normal. (Page 42.) The treatment notes also mention drugs were found in her system (page 40).

ANALYSIS:

Claimant had a normal physical examination. Objective medical evidence does not establish disability at the listing or equivalence level. The collective medical evidence shows claimant capable of performing a wide range of medium work.

* * *

Claimant's DSM diagnosis on June 19, 2008 was: major depression, recurrent, moderate; generalized anxiety disorder.

(6) Claimant lives with her boyfriend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (needs help), dishwashing (needs help), light cleaning (sometimes) and grocery shopping (sometimes). Claimant was hospitalized in 2008 for heart problems by syncope. Claimant does not use a cane, walker, wheelchair or shower stool. She does not wear braces.

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

(8) The following medical records are persuasive:

(a) A [REDACTED] psychiatrist exam was reviewed.

The psychiatrist provided the following background:

Claimant states her main disability are her problems with chest pain and syncopal episodes, headaches and low back pain. Apparently, she has been having problems with chest pain and syncopal episodes for a few years. She has had multiple hospitalizations. She apparently, in October, was hospitalized and had some type implantable monitor inserted. I do not have any information about specifically

what that was for or how long they plan on keeping that in. She did have chest pains a few days ago and was in the emergency room for that, but apparently was released. She also had problems with headaches for about 15 years now. She usually gets headaches about two to three times a week. She also has problems with pain in the lower back over the past year. Apparently, she slipped on the ice and twisted her lower back. She has not had significant treatment for that.

The psychiatrist provided the following assessment:

- (1) History of chest pain and syncopal episodes;
- (2) Headaches;
- (3) Back pain.

Note: The psychiatrist did not state that the claimant was totally unable to work.

* * *

(9) Claimant alleges disability based on a mental impairment: forgetfulness. The hospital records provide the following Axis I diagnoses: Major depression, recurrent, moderate; generalized anxiety disorder. The psychiatrist did not provide a GAF score. The hospital psychiatrist did not report any functional limitations due to claimant's multiple impairments. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

(10) Claimant alleges disability based on a combination of physical impairments: chest pain and syncopal episodes. The recent physical examination provided by the Sparrow psychiatrist shows the following impairments: history of chest pain and syncopal episodes, headaches and back pain. The psychiatrist did not find any evidence of radiculopathy on examination. The medical records do not establish a severe functional limitation arising out of claimant's physical impairments.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

██████████ provided the following summary of claimant's physician:

Claimant was hospitalized ██████████
██████████ for fracture of her left hip requiring surgery. In addition, claimant is significant for hypertension, hypothyroidism, COPD, anxiety and remote shingles. She suffers from shortness of breath, generalized fatigue, chronic pain and requires a cane to ambulate.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has a Residual Functional Capacity (RFC) to perform unskilled light work.

The department denied MA-P/SDA benefits based on 20 CFR 416.967(b).

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).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for purposes of the MA-P program. 20 CFR 416.927(e).

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 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.

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/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. Unless an impairment is expected to result in death, it must have existed or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a). If claimant does not have an impairment or combination of impairments that profoundly limit her physical/mental ability to do basic work activities, she does not meet the Step 2 criteria.

However, under the *de minimus* rule, claimant meets the severity and duration requirements and meets the Step 2 disability qualifications.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant alleges disability based on Listings 1.04A, 12.04, and 12.07. SHRT reviewed the claimant's eligibility based on the Listings and decided that claimant does not meet any of the applicable listings.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as an assistant manager for a tobacco store.

Claimant's work as an assistant manager was essentially sedentary work. There is no evidence on this record that would preclude claimant from returning to her previous work as an assistant manager of a tobacco store.

Therefore, claimant has not met her burden of proof to establish that she is unable to return to her work as an assistant manager.

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 mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on forgetfulness. There is no clinical evidence from the Ph.D. psychologist or psychiatrist to establish that claimant is totally unable to work based on a mental impairment. Furthermore, claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity. For these reasons, claimant is not entitled to MA-P disability based on her mental impairments.

Second, claimant alleges disability based on back dysfunction, hypertension, shortness of breath and chronic fatigue. There is no probative medical evidence in the record to show that the combination of claimant's physical impairments totally preclude all work activity.

Third, claimant alleges disability based on back dysfunction with pain. 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. Currently, claimant performs many activities of daily living, has an active social life with her boyfriend. Also, claimant 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 was able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

Consistent with this analysis, the department correctly denied claimant's MA-P application, based on Step 5 of the sequential analysis as described 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 disability requirements under PEM 260/261.

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: March 5, 2010

Date Mailed: March 8, 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:

