

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: 2009-26056
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 5, 2009
Isabella 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 August 5, 2009 at 10:30 a.m.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on August 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 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/SDA applicant (January 23, 2009) who was denied by SHRT (June 26, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age—44; education—10th grade, post-high school education—none; work experience—home help worker for a private patient, adult foster care worker for an adult foster care home.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004 when she worked as a home help worker for a private patient

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

- (a) Low back dysfunction with pain;
- (b) Left leg dysfunction with pain;
- (c) Herniated disc.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 26, 2009)

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's eligibility using SSI Listing 1.01 and 13.01. SHRT decided claimant does not meet the applicable SSI Listing. SHRT denied disability based on claimant's failure to establish a severe impairment 20 CFR 416.920(c).

* * *

(6) Claimant lives with her husband, her 2 adult daughters and her 2 grandchildren. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), light cleaning (sometimes) and grocery shopping (needs

help). Claimant rides the electric cart when she shops. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces. Claimant received inpatient hospital treatment in 2008 to obtain a hysterectomy. She did not receive any inpatient hospital care in 2009. Claimant wears a TENS unit on a daily basis to reduce her pain.

(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) An October 9, 2008 neurosurgery narrative report was reviewed.

The neurosurgeon provided the following background:

Thank you for asking me to see claimant for evaluation of 2 right brain masses. Her mother is here with her. This was part of work-up for arm symptoms. She has some headaches off and on chronically; sometimes on the right sometimes on the left. She has a history of chronic low back pain for seeing [REDACTED], and then had a spinal cord stimulator placed in 2007 with [REDACTED]. She has some occasional tingling in digits 4 and 5 on the left side. No radicular type pain in the arms. She has had breast surgery, back surgery twice, stomach surgery twice and a hysterectomy. She has had the spinal cord stimulator placed. She has no allergies. She is on [REDACTED]

[REDACTED]. She has a history of hiatal hernia and colecystectomy. She is disabled. She was an adult foster care worker. She has been married 22 years. She has a grade school education. She has an occasional drink. She smokes 2 packs of cigarettes a day. She has a family history of heart attack and her father. Her mother has high blood pressure. She has a child with colitis. 14 point system review is contained within a separately charted physician review document and is positive for depression.

I examined her, she is awake and alert. She has no scleral Icterus or tarodid bruid. Lungs are clear. No cardiac murmur. Abdomen is benign. No clubbing, cyanosis or edema. She has normal expressive language, inside and

outside. No extinction to double simultaneous stimulation. Finger to nose testing was intact. She has equal reactive pupils, full eye movement, full facial movement, corneas are symmetric midline, symmetrical shoulder shrug, full power proximally and distally to detailed testing, 2+ reflexes biceps, brachioradialis, one + right triceps, absent left triceps, trace knees and ankles, down going toes, normal tone, no atrophy or fasciculation. No mechanical signs.

MRI shows what appear to be 2 meningiomas.

* * *

- (b) An October 1, 2008 EMG report was reviewed.

The physician provided the following clinical information:

Claimant is a 43 year-old right hand dominant Caucasian woman who has had left upper extremity numbness over the past 3 to 4 months. She has had intermittent symptoms with numbness of the whole left upper extremity. Numbness may last for minutes to hours at times. She has also had diffuse aching in her left upper extremity. Her numbness and pain often start in the shoulder area and gradually travels down her forearm through the fourth and fifth fingers. Claimant has not had any accompanying weakness. She has not had any sensory motor symptoms in the right upper extremity.

* * *

IMPRESSION:

This electrodiagnostic study of upper extremities did not show any convincing evidence for entrapment neuropathy, such as carpal tunnel syndrome, or cubital tunnel syndrome, but she has had symptoms suggestive of possible ulnar neuropathy on the left side. Claimant has had mild back pain, but there is no evidence for a significant cervical radiculopathy. This study did not show convincing evidence for myopathy. She had more diffuse symptoms in the upper left extremity with numbness, which comes and goes. Possibly a more central process such as demyelinating condition. Other brain lesions should be considered further.

* * *

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not allege a mental impairment as the basis for disability. Claimant did not provide a 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 claimant's treating physician reports she is totally unable to work, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application. Claimant did not appeal.

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 unskilled medium work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of Social Security Listing. The department evaluated claimant using SSI Listings 1.01 and 13.01. Claimant does not meet those Listings.

The department thinks that claimant has not established a severe impairment under 20 CFR 416.920(c).

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 combined 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 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 a continuous period of 12 months and 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 *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. SHRT evaluated claimant's disability using SSI Listing 1.01 and 13.01. SHRT decided that claimant does not meet any of applicable SSI Listing.

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 direct care provider for a single patient who has private pay. Claimant's previous work was medium work.

Except for the Medical Source Opinion (MSO) provided by the claimant's specialist, there is no evidence that claimant cannot is totally unable to work. However, based on claimant's back dysfunction, back and leg dysfunction, she is not able to return to her previous (medium work) as a direct care provider.

Since claimant is able to return to her previous work as a direct care provider, she 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 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 provide any clinical evidence from a PhD psychologist or a psychiatrist. Claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on her back and leg dysfunction. The only evidence in support of claimant's total disability is the information supplied by her neurologist. However, this Medical Source Opinion (MSO) will not be given controlling weight because it is contrary to the great weight of medical evidence in the record.

Third, during the hearing, claimant testified that a major impediment to her return to work was her back and leg dysfunction secondary to her back and leg 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 many Activities of Daily Living and has an active social life with her husband, adult daughters and her grandchildren who all live with her.

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].

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 261/261.

Accordingly, the 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: April 6, 2010

Date Mailed: April 7, 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

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