

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: 2009-27905  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 13, 2009  
Montcalm 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 in Stanton on August 13, 2009. Claimant personally appeared and testified under oath.

The department was represented by Richard Stilson (FIM).

The Administrative Law Judge appeared by telephone from Lansing

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 applicant (March 4, 2009) who was denied by SHRT (July 9, 2009) based on claimant's ability to perform a wide range of light work. SHRT relied on Med-Voc Rule 202.17 as a guide. Claimant requests retro-MA for December 2008 and January, February 2009.

(2) Claimant's vocational factors are: age—22; education—11<sup>th</sup> grade, post-high school education—none; work experience—manager of a [REDACTED] restaurant and waitress.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since [REDACTED] [REDACTED] when she was manager of a [REDACTED] restaurant.

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

- (a) Three slipped discs in the back;
- (b) Unable to stand for long periods;
- (c) Unable to sit for long periods;
- (d) Unable to concentrate due to back pain;
- (e) Chronic back pain.

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

**OBJECTIVE MEDICAL EVIDENCE (JULY 9, 2009)**

The department thinks that claimant's combined impairments (back pain and diabetes mellitus; do not prevent her from performing unskilled light work based on Med-Voc Rule 202.17.

\* \* \*

(6) Claimant lives with a girlfriend and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking, dish washing, mopping (sometimes), laundry (no lifting), and grocery shopping (sometimes). Claimant was not hospitalized in 2008 or 2009. ). Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces on her neck, her back, her arms or her legs.

(7) Claimant has a valid driver's license and drives an automobile approximately 10 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] was reviewed.

The neurosurgeon provided the following background:

Claimant was seen today at the request of [REDACTED] with a history that she has had a lot of back pain and stiffness and tightness. She has a very strong family history of spine disease, disc disease, the fraternal grandparents, on the father's side. She is a lady who works and runs, I believe, a [REDACTED]. She is not making any progress as far as her pain is concerned. She is a lady who has some paresthesia in both lower extremities. She has evidence of anterior tibia EHL weakness on the left. There is no loss of sphincter control.

We did do a systemic review including head, eyes, ears, nose, throat, endocrine, cardio-respiratory, gastrointestinal, bone and joint, neuromuscular, genitourinary, allergic, mental status and family history, and did not come up with any other new or additional symptoms or findings.

\* \* \*

As far as the exam is concerned, she is bright, alert, responsive and oriented x 3. She is a rather tall lady and may be a little bit overweight.

\* \* \*

She does have a listing to the left as she walks. She tends to sit on her right cheek. There is no sacral sensory loss at this time. The rest of the evaluation, I think, is within normal limits.

We have reviewed her films and she does have 2 level disc disease. She has an extruded disc at the L3-4 level with inferior extension along the upper portion on the body at L4 and at L4-5 she has disc degeneration with subligamentous bulging.

This is a lady who is really uncomfortable and does have a neurologic deficit. I think probably she should have operative intervention. This a fairly large disc rupture.

\* \* \*

(9) Claimant does not allege disability based on mental impairment. 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. The examining physician provided the following diagnoses: Two-level disc disease, disc dysfunction at L3-4 and L4-5. Claimant alleges disability due to chronic back pain. The recent neurological evaluation (February 10, 2009) does establish “a fairly large disc rupture.” However, the neurologist did not state that claimant was totally unable to work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Her application is still pending.

## **CONCLUSIONS OF LAW**

### **CLAIMANT’S POSITION**

Claimant thinks she is entitled to MA-P benefits based on the impairments listed in paragraph #4, above.

### **DEPARTMENT’S POSITION**

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

The department denied claimant’s application based on Med-Voc Rule 202.17.

### **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).

**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 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.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimant's who are working, or otherwise performing substantial gainful activity (SGA), are not disable regardless of medical condition, age, education or work experience. 20CFR 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 lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P, 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.

Under the *de minimus* rule, claimant meets the severity duration requirements. However, in order to qualify for disability based on MA-P, claimant must establish impairments which prevent normal work activities.

### **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.

SHRT evaluated claimant's eligibility using Listings 1.04 and 9.08. Claimant does not meet the applicable Listing.

### **STEP 4**

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a manager for a [REDACTED] restaurant. Claimant's managerial work at a [REDACTED] restaurant was light work. Claimant's work as a manager involved managerial skills which become difficult when chronic pain is present.

Based on the medical record available to the Administrative Law Judge, claimant is not able to return to her previous job as a [REDACTED] manager due to her chronic back dysfunction and pain.

Therefore, claimant meets the Step 4 disability criteria.

**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/psychological evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental impairment. Also, claimant did not submit a DHS-49D or a DHS-49E to show her mental residual functional capacity. Claimant is not entitled to MA-P disability based on a mental impairment.

Second, claimant alleges disability based on her two-level disc disease and chronic back pain. The medical evidence in the record does establish that claimant has a "fairly large disc rupture." This impairment does prevent claimant from constant standing and lifting. However, it does not preclude her from performing sedentary work.

Third, claimant testified that she is unable to perform any work due to her chronic pain secondary to her spine dysfunction. 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 combined impairments. Claimant currently performs many Activities of Daily Living, has an active social life with her roommate and drives an automobile approximately 10 times a month. 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 is able to work as a ticket-taker at a theatre, as a parking lot attendant, and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P 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 disability requirements under PEM 260.

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: April 20, 2010

Date Mailed: April 21, 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

cc:

