

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: 2009-31288
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 in Charlotte on October 1, 2009. Claimant personally appeared and testified under oath.

The department was represented by Nelle Harvey (AP Worker).

Claimant requested additional time to submit new medical evidence requested by SHRT. The new medical evidence was submitted to the State Hearing Review Team (SHRT) on October 8, 2009.

Claimant waived the timeliness requirements 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) 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 (March 13, 2009) who was denied by SHRT (August 13, 2009) based on claimant's failure to establish an impairment which meets the severity and duration requirements for the programs requested. SHRT denied benefits based on Med-Voc Rules 201.05 and 202.15. Claimant requests retro MA for December 2008 and January, February 2009.

(2) Claimant's vocational factors are: age--52; education—high school diploma, post-high school education--none; work experience—kitchen aide at a long-term care facility in [REDACTED], clerical worker at [REDACTED], clerical worker at [REDACTED], housecleaner.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009, when she worked as a kitchen aide at a long-term care facility in [REDACTED].

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

- (a) Bilateral knee dysfunction;
- (b) Unable to stand for long periods;
- (c) Unable to walk for long periods;
- (d) Depression;
- (e) Bipolar disorder.

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

OBJECTIVE MEDICAL EVIDENCE (August 13, 2009)

The department thinks that claimant is able to perform unskilled, sedentary light work.

The department denied benefits based on Med-Voc Rules 201.05 and 202.15.

(6) Claimant lives with her adult daughter and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing (sometimes), light cleaning, mopping, vacuuming, laundry (sometimes) and grocery shopping (needs help carrying grocery bags). 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 hospitalization in 2008 or 2009.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] narrative and physical examination was provided by a physiatrist. The physiatrist provided the following history:

Claimant is a 52-year-old female who is here for general internal medicine exam to evaluate her disabilities. She states her main medical disability is related to problems with her knees. She states she has had problems with her knees for about 20 years now, and has noted some topping over that time, although over the past 4 or 5 years, she has been notifying increasing pain in her knees. The right knee is worse than the left. She does not remember any specific injury to her knees, but has just noticed increasing pain. She did see an orthopedist about two years ago at which time she had an injection in the right knee and that did seem to help for a short period of time. She continues to have pain bilaterally with some swelling primarily in the right knee. She does describe morning stiffness as well. She has not had any recent treatment or evaluation because of lack of insurance, although she does use narcotic pain medications to control her pain.

* * *

SOCIAL HISTORY:

Claimant smokes about a pack of cigarettes a day. She has a 45-pack a year history of smoking. She does have a history of

alcohol abuse, but stopped drinking approximately 4 years ago.

* * *

The physiatrist provided the following assessment: Bilateral knee pain.

Claimant has had problems with knee pain for many years, although it has been worsening significant over the past 4 to 5 years.

On exam, she does have swelling in the right knee. She has decreased range of motion in both knees, and tenderness in both knees as well. I suspect she does have some evidence of degenerative changes in both of these joints.

At this point, she should not be doing any prolonged standing. She is not able to do any kneeling or squatting nor would she be able to do any significant stair climbing. In addition, she would need to be able to sit/stand, as tolerated.

* * *

(9) Claimant alleges depression and bipolar disorder as the basis of her disability. 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 provide any clinical evidence from a psychiatrist or a Ph.D. psychologist to establish the severity and duration of her reported mental impairments. Claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

(10) Claimant alleges bilateral knee dysfunction and bilateral knee pain as the basis for an exertional impairment. However, the probative medical evidence does not establish an acute (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The recent report from the physiatrist (May 12, 2009) does indicate that claimant is unable to do prolonged standing, kneeling or squatting. Also, she is not able to do significant stair climbing. Finally, the physiatrist reports that claimant needs a position that permits a sit/stand option. However, the medical records at this time do not

establish a severe functional impairment which totally prevents claimant from performing all work activities, including sedentary work.

(11) Claimant has not filed for federal disability benefits (SSI) with the Social Security Administration. However, she is advised to do so as soon as possible.

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 has the Residual Functional Capacity (RFC) to perform unskilled sedentary and light work.

The department denied MA-P benefits based on Med-Voc Rules 201.05 and 202.15.

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 the purposes of the MA-P/SDA programs. 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/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 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/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

However, under the *de minimus* rule, claimant meets the severity and duration requirements. She also 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.

SHRT evaluated claimant's impairments using SSI Listing 201.01. Claimant does not meet the requirements of this Listing.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a kitchen aide at a long-term care facility in [REDACTED]. Claimant's work as a kitchen aide was light/medium work, which required her to stand continuously for her 8-hour shift. It also required her to bend and stoop and lift items weighing 20 pounds or more.

Since claimant has long-standing bilateral knee dysfunction, she is unable to do the standing required of a person working in a long-term care facility as a kitchen aide.

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

First, claimant alleges disability based on a combination of mental impairments: depression and bipolar disorder. The [REDACTED] does not report any evidence of depression or bipolar disorder. Furthermore, claimant did not submit any clinical

assessments from a psychiatrist or a Ph.D. psychologist. Finally, claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity. For these reasons, claimant is not entitled to MA-P/SDA disability based on her mental impairments.

Second, claimant alleges disability based on her bilateral knee dysfunction. Claimant reports that she has had knee problems for many years, but they have worsened during the past 4 to 5 years. The [REDACTED] psychiatrist did notice swelling in claimant's right knee. Also, she has decreased range of motion in both knees and tenderness in both knees as well. The psychiatrist suspects that claimant has some evidence of degenerative changes in both of claimant's knees. However, the psychiatrist did not state that claimant was totally unable to work. He did state that claimant needed a job with a sit/stand option, however.

Third, claimant testified that a major impediment to her return to work was her knee pain, which is gradually getting more disruptive. 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.

Claimant currently performs several activities of daily living, has an active social life with her adult daughter, with whom she lives, and 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, claimant is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED]. These jobs would provide claimant with a sit/stand

option, as recommended by the psychiatrist. Also, because of the handicapper laws recently enacted in the United States, there are many jobs available for persons with handicaps similar to claimant's.

Consistent with 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: 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 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/tg

cc:

