

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: 2009-32700
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 2009
St. Clair 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 28, 2009, in Port Huron. Claimant personally appeared and testified under oath.

The department was represented by Kris Rutowski (FIM).

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 (March 5, 2009) who was denied by SHRT (August 28, 2009) based on claimant's ability to perform sedentary work. The Record closed on October 28, 2009 and the disputed eligibility period is March 5, 2009 to October 28, 2009.

(2) Claimant's vocational factors are: age--52; education--high school diploma; post high school education-- [REDACTED] (two semesters)(mental health major) and [REDACTED] (four semesters)(business administration major); work experience-- counselor/teacher for the [REDACTED], teen advisor for comprehensive youth center.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007, when she worked as a counselor and a teacher at the [REDACTED].

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

- (a) Status post on the job injury (fell down the stairs)(2007;
- (b) Bilateral knee dysfunction;
- (c) Resistant infection (mursa); and
- (d) Left knee replacement suggested by physician.

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

OBJECTIVE MEDICAL EVIDENCE (August 1, 2009)

In 12/08, x-rays of the right knee showed advanced degenerative tricompartmental arthritis. Three staples in the proximal tibia. Bone on bone in the medial compartment (page 140).

In 2/09, the claimant was 279 pounds. The left knee ligaments were stable. She had mild crepitation and mild effusion. X-rays of the left knee showed moderate narrowing and weight-bearing showed bone on bone medial compartment. The doctor indicated claimant was capable of clerical work (page 118).

In 4/09, the claimant was 70" and 273 pounds. She had synovial thickening in both knees with mildly decreased range of motion. Grip strength was intact and dexterity was unimpaired. Motor strength and tone were normal. Sensory functions were intact. Reflexes were 1+ and symmetrical. She walked with small stepped gait without the use of an assistive device. She did use a cane for pain (pages 144-147).

ANALYSIS:

Claimant does have degenerative arthritis in her knees. She is able to walk with a small stepped gait without an assist device, but used a cane for pain. She had normal strength. There was no evidence of a significant mental impairment. She would be able to do sedentary work.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), cooking (sometimes), dishwashing, light cleaning, mopping, vacuuming, and laundry. Claimant uses a cane on a daily basis. She does not use a walker, wheelchair, or shower stool. Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is computer literate. Claimant is a licensed cosmetologist.

(8) The following medical records are persuasive:

(a) An [REDACTED]' physical examination report was reviewed.

The internist provided the following chief complaints: Right knee, left ankle, left knee injury, toxic metabolic neuropathy.

Claimant has had a history of a slip and fall injury down a flight of stairs while at a shelter in March of 2006, sustaining a right knee injury. She did undergo arthroscopic intervention by [REDACTED]. She also sustained an injury to her left ankle. She states she did undergo surgical

intervention to the ankle at that time. She also states she has had bone spur surgery in 2002. This was complicated by an infectious process. She claims she still has sores on her arms and head that are pruritic. She is on Tylenol ES and Tylenol 3s as needed for pain. She does use a cane for pain control. She is not undergoing any therapy otherwise.

The claimant has not worked since 2007. She used to work at a youth camp doing services and stopped because of her injury. She now lives by herself where her daughter comes over to help with the household chores. She is able to drive and cook. She still enjoys singing but has mostly been doing paperwork for DHS as well as looking for work. She states she can sit if she adjusts her weight. She can only stand about five minutes, she does not know how far she can walk and whether she needs her cane. She cannot lift anything more than ten pounds.

* * *

The consulting internist provided the following conclusions:

(1) Arthritis.

Claimant did have synovial thickening in both knees, but her ankles did appear stable. Range of motion in her knees was mildly diminished. She had only mild difficulty doing orthopedic maneuvers, and does compensate with a guarded rate, but is relatively stable. At this point, continued supportive care would be beneficial as well as weight reduction being 273 pounds.

(2) Metabolic neuropathy.

Please note the patient has a history of metabolic neuropathy. Today, I did not find any evidence of neuropathic symptoms. Again, remainder of her clinical findings are as described above. This appears to be relatively noncontributory and claimant is not undergoing any treatment.

* * *

NOTE: The consulting internist did not state that claimant was totally unable to work.

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any clinical evaluations by a psychiatrist. 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: An on the job injury to her right ankle, bilateral knee dysfunction, status post resistant infection; recommendation from her doctor that she undergo a left knee replacement. A March 26, 2009 Medical Examination Report (DHS-49) provides a current diagnoses: degenerative arthritis-- both knees. The physician states that claimant is totally unable to lift any weight and unable to stand for any length of time. The claimant is able to use her hands/arms normally and able to use her feet/legs normally. 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.

(11) On October 23, 2008, the Social Security Administration denied claimant's application for SSI. Claimant filed a timely appeal.

(12) Claimant is obese, weighing 279 pounds with a height of 70 inches. Claimant has been advised to lose weight in order to reduce her bilateral knee dysfunction.

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) for unskilled sedentary work.

Claimant's past work as an independent living specialist/teacher was performed at the sedentary exertional level.

Therefore, claimant retains the capacity to perform her past relevant work. Claimant's request for disability benefits was denied based on 20 CFR 416.920(e).

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 does 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 program.

20 CFR 416.927(b).

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 purposes.

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 which is expected to result in death, has existed for 12 months and/or totally prevents all basic 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).

Using the *de minimus* standard, claimant meets the Step 2 eligibility 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 the Listings. SHRT decided that claimant does not meet any of the applicable SSI Listings.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP #4

The issue at Step 4 is whether claimant has the ability to do her previous work. Claimant was last employed as a teacher for the [REDACTED]. This was sedentary/light work.

The medical record establishes that claimant has severe bilateral degenerative bone disease in her bilateral knees. Claimant's bilateral knee impairments preclude her from continuous standing and heavy lifting. They do not, however, preclude sedentary work. Since claimant is unable to perform the standing and lifting required of her position at the [REDACTED], she is not able to return to her previous work.

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.

Second, claimant alleges disability based on bilateral knee dysfunction and status post toxic metabolic polyneuropathy. The consulting physician noted that there is no evidence, currently, of a metabolic polyneuropathy. The physicians who have recently examined claimant do confirm a diagnosis of bilateral degenerative tricompartmental arthritis. Given claimant's significant knee dysfunction, she is unable to perform heavy lifting or constant standing. Although claimant does have limitations due to her bilateral knee dysfunction, the medical evidence of record does not show that claimant is totally unable to perform sedentary work.

Third, claimant testified that a major impediment to her return to work was her bilateral knee 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. Currently, claimant performs many activities of daily living, has an active social life with her daughter, attends school at the [REDACTED] 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 theater, as a parking lot attendant, and as a greeter for [REDACTED]. These positions would provide claimant with a sit/stand option.

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 PAM 260/261.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 14, 2010

Date Mailed: May 17, 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.

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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.

JWS/tg

cc:

