

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: 2009-33128
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 29, 2009
Lapeer 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 29, 2009, in Lapeer. Claimant personally appeared and testified under oath. The claimant was represented by [REDACTED].

The department was represented by Mike Hord (FIM).

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on October 30, 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 (February 26, 2009) who was denied by SHRT (August 27, 2009) based on claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28, as a guide. Claimant requests retro MA for November-December 2008 and January 2009. The Record closed on October 29, 2009 and the disputed eligibility period is February 26, 2009 to October 29, 2009.

(2) Claimant's vocational factors are: age--27; education--high school diploma; post high school education--took specialized vocational courses in restaurant management and food preparation in high school; work experience--cashier and stocker for [REDACTED] station and cashier and stocker for [REDACTED] gas station.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when she was a cashier and stocker for [REDACTED] gas station.

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

- (a) Pseudo brain tumor;
- (b) Pancreatitis;
- (c) Polycystic ovarian disease;
- (d) Back pain due to repeated spinal taps.
- (e) Anxiety disorder.

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

OBJECTIVE MEDICAL EVIDENCE (August 27, 2009)

SHRT decided that claimant is able to perform unskilled medium work under 20 CFR 416.967(c). SHRT evaluated claimant's impairments using SSI Listings 11.01 and 5.01. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on Med-Voc Rule 203.28 and claimant's ability to perform unskilled medium work.

- (6) Claimant lives with her parents and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes) and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower stool. She does not wear braces. Claimant received inpatient hospital care on five different occasions in 2008 for treatment of her headaches. Claimant was hospitalized on nine different occasions in 2009 for treatment of her headaches and confusion.

- (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 [REDACTED] physical examination report was reviewed.

The physician provided the following history:

Claimant is a 26-year-old female who has a known history of hydrocephalus with chronic papilledema, who comes in complaining with headache, x one week. Claimant has had multiple admissions into emergency room for headache, at least one per month for the past six months. She has already had two this month. Claimant developed the headache one week prior to admission. She states she did take Tylenol over the counter which did not help. She then developed nausea and vomiting approximately four days prior to admission, which has progressively become worse, so claimant came into the ER. She does have a history of hydrocephalus, so claimant had a CT of the

head done which showed no acute process. Claimant will be admitted for a 23-hour observation for pain management.

The emergency physician provided the following assessment:

Acute intractable cephalgia with nausea and vomiting.

- (9) Claimant alleges disability based on a mental impairment: anxiety disorder.

Claimant did not provide any clinical (psychiatric) evaluations to establish her mental status.

Also, 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:

hydrocephalus, cephalgia, polycystic disease, acid reflux syndrome, pseudo brain tumor, pancreatitis, polycystic ovarian disease, back pain due to spinal taps. The consulting neurologist at [REDACTED] provided the following impressions:

cephalgia--maybe related to aseptic meningitis. Claimant noticed with increased white blood cells. **NOTE:** The consulting neurologist did not state that claimant was totally unable to work.

- (11) Claimant recently applied for federal disability benefits. Her Social Security application is currently pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on the following impairments:

Claimant is a 26-year-old woman who was recently admitted to [REDACTED] for cephalgia secondary to intracranial pressure due to hydrocephalus. Claimant has been sick for a few years, and is gradually getting worse. She has a past medical history significant for polycystic ovarian syndrome, acid reflux, pancreatitis, fuzzy vision, short-term memory problems, coordination and speech problems, back pain, hip problems, fatigue, etc. Claimant states she is unable to work and has been denied Medicaid and Social Security several times. She is

definitely in need of financial and medical help. Claimant has not worked in quite of a few years, and is unable. She has no income or health coverage and is unable to pay for this hospital stay, testing, prescriptions, etc. Claimant is worried that she is going to continue to get worse since she has no way to pay for her care.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled medium work. The department evaluated claimant's impairments using SSI Listings 11.01 and 5.01, as a guide. The department determined that claimant does not meet any of the applicable SSI Listings.

The department denied claimant's request for disability benefits based on Med-Voc Rule 203.28, as a guide.

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).

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

20 CFR 416.920(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 disabled 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 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 416.99.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Applying the *de minimus* rule to the facts in this case, claimant meets the Step 2 eligibility test.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant alleges disability based on the applicable Listings.

SHRT reviewed claimant's eligibility using the applicable SSI Listings (11.01 and 5.01). SHRT decided, based on the current evidence in the record, 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 is able to do her previous work. Claimant last worked as a cashier and grocery stocker for the [REDACTED] gas station. This was medium work because it involved carrying heavy boxes containing food items.

The medical evidence of record establishes that claimant has low back pain and a history of chronic cephalgia (headaches). Claimant also has hydrocephalus and polycystic disease. Due to claimant's neurological impairments, she is unable to perform repetitive lifting.

Since claimant is unable to perform repetitive lifting, she is unable to return to her previous work at the [REDACTED] gas station.

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 alleges disability based on a mental impairment: anxiety disorder. Claimant did not provide any clinical evidence to establish her mental status. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on her combination of physical impairments. The physicians have been unable to diagnose claimant's condition with any degree of certainty. However, the record does show that claimant has chronic intracranial pressure. Claimant's neurological impairments prevent her from performing repeated heavy lifting. In addition, claimant has back impairments due to chronic surgical procedures on her spine. Although claimant does have limitations based on her neurological and back impairments, 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 is her chronic back pain in combination with her headaches. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes the 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 parents 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, she is able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter for [REDACTED]. Because of the [REDACTED] recently enacted in the United States, there are many jobs available for persons with handicaps similar to claimant.

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 (covering the disputed eligibility period from February 26 to October 29, 2009, is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: March 15, 2010

Date Mailed: March 15, 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.

JWS/tg

cc:

