

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: 2009-33513
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 6, 2009
Branch 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 October 6, 2009, in Coldwater.

The department was represented by Amy McMichael (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. The new medical evidence was submitted to the State Hearing Review Team (SHRT) on October 6, 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)?

(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/retro applicant (May 6, 2009) who was denied by SHRT (September 11, 2009) based on claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.27 as a guide. Claimant requests retro MA for February 2009.

(2) Claimant's vocational factors are: age—49; education—high school diploma; post high school education—none; work experience—maintenance worker for a shirt factory and housewife.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 1980 when she worked as a maintenance worker for a shirt factory.

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

- (a) Obesity;
- (b) Back dysfunction;
- (c) Leg dysfunction;
- (d) Foot dysfunction;
- (e) Unable to stand or sit for long periods;
- (f) Vision dysfunction/needs glasses.

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

OBJECTIVE MEDICAL EVIDENCE (September 11, 2009)

The physical examination done 5/2009 reported claimant weighs 281 pounds with a height of 5'4" tall. (Page 3.) An x-ray of the lumbar spine showed degenerative disease at L4-5 after vertebral intervertebral disc space and apophyseal joint disease at the L5-S1 level. (Page 16.) The diabetes is controlled with medication. (Page 14). According to the activities of daily living, claimant can see to read and write. (Pages 9-12.)

ANALYSIS:

The objective medical evidence presented does not establish a disability at the listing or equivalence level. A collective medical evidence shows that claimant is capable of performing a wide range of sedentary unskilled work.

* * *

(6) Claimant lives with her spouse and two adult children. She performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing (needs help), light cleaning, laundry (needs help), and grocery shopping (rides the [REDACTED] cart). Claimant was not hospitalized in 2008 or 2009. Claimant does not use a cane, walker, wheelchair, or showerstool. She does not wear braces.

(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: In October 2009, Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses:

- (a) (1) Degenerative disc disease;
- (2) Sleep apnea;
- (3) Diabetes mellitus-2;
- (4) Retinal detachment.

The internist reported the following functional limitations: Claimant is able to lift less than ten pounds occasionally. She is able to stand/walk less than two hours in an eight-hour day. She is able to use her hands/arms for simple grasping, reaching, and fine manipulating. Claimant is not able to performing pushing-pulling and is not able to operate foot-leg controls.

- (b) An [REDACTED] was reviewed. The internist provided the following background:

I am writing this letter in support of the claim of medical disability for claimant. I previously had written a letter regarding her medical history of uncontrolled Type 2 Diabetes, uncontrolled hypertension, uncontrolled hyperlipdemia, severe untreated sleep apnea, uncontrolled chronic back pain due to spondylosis and para-lumbar muscle spasms, three retinal detachments, chronic myopia, chronic severe urinary frequency, severe obesity, severe degenerative disc disease and severe degenerative arthritis.

On examination, claimant has multiple musculoskeletal abnormalities. Her posture is stooped. She has mild kyphosis. She has para-lumbar tenderness and increased muscle tension. She has vertebral spinal tenderness. She has tenderness of the knees, ankles, elbows and hips and limited range of motion of all these joints. She has a very slow antalgic gait. Her visual acuity is poor. I did not do a formal visual testing at this time. However, she has trouble distinguishing small to medium type on a page.

Please reconsider the decision to declare her as not medically disabled. Her main issues are the musculoskeletal problems which severely limit the mobility and severely limit her ability to engage in any activity for more than a few minutes without having to sit or lie down and rest. In addition, her untreated sleep apnea, Type II diabetes and uncontrolled hypertension are taking a severe toll on her energy level and stamina.

* * *

(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 does not allege disability based on the mental impairment. There is no clinical evidence of a severe mental impairment in the record. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

(10) The probative medical evidence does establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The Medical Examination Report (October 2, 2009) states the claimant

is not able to lift ten pounds occasionally. She is not able to stand/walk more than two hours in an eight-hour day. Claimant is unable to operate foot/leg controls. In addition, claimant has retinal detachments resulting in very poor vision. In addition, the internal medicine report (August 24, 2009) states that she has multiple musculoskeletal problems which severely limit her mobility and severely limit her ability to engage in any activity for more than a few minutes without having to sit or lay down and rest. The internist also states that in addition to her untreated sleep apnea, Type II Diabetes and uncontrolled hypertension severely reduce her energy level and stamina.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied her application because of her husband's income.

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 is able to perform a wide range of unskilled sedentary work. The department denied benefits based on Med-Voc Rule 202.27 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).

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 purposes of the MA-P program. 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 purposes. PEM 260. “Disability,” as defined by MA-P 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.

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, the 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.

However, under the *de minimus* rule, claimant meets the severity and duration requirements of Step 2.

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 Listings.

SHRT evaluated claimant's impairments and determined that she does not meet the applicable SSI listings.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a janitor for a shirt factory.

Based on the medical evidence provided by claimant's internist, she is not able to stand, walk, bend and lift, according to the requirements of her prior employment as a janitor.

Therefore, claimant meets the Step 4 disability requirements.

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 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.

Second, claimant alleges disability based on a combination of physical impairments including uncontrolled Type II Diabetes, uncontrolled hypertension, uncontrolled hyperlipidemia, severe untreated sleep apnea, uncontrolled chronic back pain due to spondylolesis and para-lumbar muscle spasms, retinal detachments, chronic severe urinary frequency, severe obesity and severe degenerative disc disease. The internist reports that due to claimant's musculoskeletal problems, she is unable to engage in any physical activity for more than a few minutes, without having to sit or lie down and rest.

Considering the entire medical record, in combination with claimant's testimony and the documentary evidence provided by her internist, the Administrative Law Judge concludes that claimant is not able to perform Substantial Gainful Activity (SGA) at this time. Based on this analysis, the department incorrectly denied claimant's MA-P application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does meet the MA-P disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: March 9, 2010

Date Mailed: March 10, 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:

A large black rectangular redaction box covering several lines of text in the cc: field.