

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: 2009-37202

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 10, 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 December 10, 2009 in Port Huron. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

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 applicant (January 29, 2009) who was denied by SHRT (October 17, 2009) based on claimant's ability to perform light exertional work under 20 CFR 416.920(e). The disputed eligibility period is January 29, 2009 to December 10, 2009.

(2) Claimant's vocational factors are: age--62; education--10th grade; post high school education--GED and a certificate as a nurse aide; work experience--housekeeper and chore services provider for a long-term care facility, nurse aide.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when she was a housekeep/residential assistant/chore services provider for a long-term care facility.

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

- (a) Unable to stand more than 20 minutes;
- (b) Unable to walk more than 20 minute;
- (c) Needs help with household chores; and
- (d) Worried about the possibility of a cancer diagnosis.

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

OBJECTIVE MEDICAL EVIDENCE (October 7, 2009)

Claimant alleges disability due to a mass on her uterus and degenerative joint disease. Claimant believes that her conditions are malignant, has family history of cancer, but there is no medical evidence to the same. On Page 3, there is mass shrinking in size without any treatment. New evidence of Social Security examination does show some evidence of degenerative joint disease without significant limitations. The consulting physician was unable to draw any clear conclusions related to the mass, other than it was located at the left lower quadrant and was not a culpable mass.

ANALYSIS:

The Medical Review Team denied the original application for insufficient evidence and requested additional information that was never made available. Additional evidence was finally received with a hearing request and additional information added from Social Security Administration. Social Security Administration denied due to light exertional and past relevant work. The medical evidence in the file reflects these findings. The treating physician twice notes that claimant is capable of light exertional tasks, pages 1 and 47.

* * *

(6) Claimant lives with her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, grocery shopping (needs help). Claimant does not use a cane, walker, and wheelchair. She uses a shower stool approximately 14 times a month. She does not wear braces. Claimant did not receive inpatient hospital care in 2008; 2009, she was treated for a uterine cyst.

(7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. She is not computer literate.

(8) The following medical records are persuasive:

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

The internist provided the following background:

CHIEF COMPLAINTS--uterine cancer and degenerative joint disease.

Claimant stopped working in January 2009 in housekeeping because of her diagnosis of malignancy.

She has been working out in both [REDACTED] and [REDACTED]. Whether or not she has an actual malignancy is uncertain. She knows of a cyst and was led to believe that she does have a likely malignancy. In the six months since she was first diagnosed, she has had increasing pain in the left lower quadrant. Her brother is a

recent survivor of bowel cancer. She has noted increasing pain with bowel movements. She takes Darvocet up to four daily for her pain. This has definitely worsened over the past six months.

For five years, she has had intermittent pain in the right knee, left foot and her hands. She takes no medicine, other than her analgesic at this time. She has been told she has degenerative joint disease.

* * *

SOCIAL HISTORY: Tobacco: Used to smoke one and one-half pack per day for 45 years, but currently smokes six cigarettes per day.

Musculoskeletal:

There was no evidence of joint laxity, crepitation, or effusion. Grip strength was diminished to 70% on the right and 70% on the left. Dexterity was unimpaired. The claimant can pick up a coin, button, and open a door. She had no difficulty getting on and off examination table, mild heel and toe walking. No difficulties squatting half way down and arising and mild difficulty hopping. Range of motion was impaired in flexion of both knees. The left ankle and flexion of the second DIP of the second joint, as shown.

The consulting internist provided the following conclusions:

- (1) Uterine problem: I am not certain from what she tells me whether or not she truly has a malignancy. She seems to have been told she has a malignancy and needs surgical exploration. She knows that she has a cyst. Approximately part of her workup was done in the [REDACTED], but the definitive diagnosis has not been confirmed. She does have exquisite pain which is much localized in the left lower quadrant. I did not feel a mass or palpitation.
- (2) Degenerative joint disease: This primarily involves the hands, right knee and left foot. Her grip was fair on the left and less so on the right. Her fist was slightly impaired, primarily as noted in the second fingers bilaterally in the DIP joints. Range of

motion in the left ankle and both knees was impaired. The right knee, however, is more symptomatic.

- (b) An August 3, 2009 Medical Examination Report (DHS-49) was reviewed. The family physician provided the following diagnosis: Uterine mass, pelvic pain left adrenal mass, tobacco abuse disorder.

The physician provided the following physical limitations: Claimant may occasionally lift up to 20 pounds frequently; she may stand and/or walk less than two hours in an eight-hour workday. She can sit less than six hours in an eight-hour day. She is able to use her hands/arms normally. She is able to use her feet/legs normally. She has no mental impairments.

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any clinical evidence of a mental impairment; she did not provide a DHS-49D or DHS-49E. The claimant alleges disability based on combination of physical impairments: Uterine mass, pelvic pain and left adrenal mass. Claimant is unable to stand for more than 20 minutes and not able to walk for more than 20 minutes. The consulting internist provided the following diagnosis: Uterine problem, uncertain etiology, degenerative joint disease involving the hands, right knee and left foot. The consulting physician did not state that claimant was totally unable to work. There is no current probative medical evidence to establish that claimant is totally unable to work based on her combination of exertional impairments.

(10) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied her benefits. Claimant filed a timely appeal.

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 light exertional work. The department thinks that claimant's past work as a job trainer was light exertional work.

The department denied MA-P/SDA benefits 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).

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. "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.

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 current 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 severity and duration requirement and the Step 2 disability 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 using Listings and decided that claimant does not qualify.

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

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work as a chore services provider/housekeeper for a long-term facility.

Claimant's previous work at a long-term care facility was light/medium work. Claimant's work as a chore service provider required her to stand for her entire shift as well as to lift heavy amounts. Claimant is no longer able to perform the physical activities required of a chore services provider. 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 a preponderance of 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 mental impairment. Claimant did not provide any clinical evidence of a mental impairment. Also, she did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments: possible malignancy, abdominal pain, and inability to stand for long periods due to right knee pain. The report provided by the consulting internist shows the following diagnoses: Uterine problem--possible malignancy, degenerative joint disease involving the hands, right and left foot. The consulting internist did not state that claimant was totally unable to work.

Third, claimant testified that a major impediment to her return to work was pain in the hands, right knee and left foot. 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. Claimant performs a significant number of activities of daily living and has an active social life with her husband and drives an automobile approximately 12 times a month.

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 for a theater, as a parking lot attendant, and as a greeter for [REDACTED] Work of this type would provide claimant with a sit-stand option at the workplace.

Based on 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 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: May 17, 2010

Date Mailed: May 18, 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:

