

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: 2009-4072
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 15, 2009
Kalamazoo 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 January 15, 2009, in Kalamazoo. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED].

The department was represented by Jennifer Jones (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on January 16, 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 issued the 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 30, 2008) who was denied by SHRT (November 20, 2008) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA-P for February, March and April 2008.

(2) Claimant's vocational factors are: age—62; education—high school diploma; post high school education—none; work experience—customer service representative for [REDACTED] and temporary employment as a receptionist/secretary/office aide.

(3) Claimant has not performed substantial gainful activity since December 2004 when she was a customer service representative for [REDACTED].

- (4) Claimant has the following unable-to-work complaints:
- (a) Status post hospitalization for atrial fibrillation;
 - (b) Diabetes mellitus;
 - (c) Hypertension [REDACTED];
 - (d) Shortness of breath (SOB).

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

Claimant was admitted in [REDACTED] after she was found to have an irregular heart beat consistent with atrial fibrillation at her doctor's office. The medication in combination was able to control her rate and she was without symptoms (page 62). Besides her heart rate, her exam was otherwise unremarkable.

ANALYSIS:

Claimant was admitted in [REDACTED] due to irregular heart beat. The physicians were able to control her heart rate with medication when she was discharged. There were no other significant abnormal findings on exam.

* * *

- (6) Claimant lives with her daughter and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, mopping (sometimes), and grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair, or shower stool. She does not wear braces on her neck, back, arms or legs. Claimant did not receive inpatient hospital treatment in [REDACTED]; she was hospitalized for four days in [REDACTED] for treatment of atrial fibrillation.

- (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) Claimant's medical records are summarized by SHRT in Paragraph #5, above.
 - (b) A [REDACTED] physical examination report was reviewed.

The physician provided the following current diagnoses:

- (1) CAD (Coronary Artery Disease)(of native coronary arteries;
- (2) Arrhythmia—atrial fibrillation;
- (3) Abnormal exercise nuclear study;
- (4) Diabetes mellitus;
- (5) Hypertension—essential (benign)
- (6) Blood pressure equals 124/86;
- (7) Cellulitis of leg NOS except foot.

The physician provided the following impressions:

- (1) Bradycardia;
- (2) History of paroxysmal A Fib;
- (3) Coronary artery disease.

The physician did not report that claimant is totally unable to work.

(9) The probative psychological 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 a mental impairment. Also, claimant did not provide a DHS-49D or DHS-49E to show her mental residual functional capacity.

(10) 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. The medical reports in the record provide the following diagnoses:

(1) coronary artery disease; (2) arrhythmia—atrial fibrillation; (3) abnormal exercise nuclear studies; (4) diabetes mellitus; (5) Hypertension—essential (benign); (6) cellulitis of left leg,

NOS, except foot; (7) bradycardia; (8) history of paroxysmal Afib; (9) Coronary artery disease.

The consulting physicians who provided medical reports did not state that claimant is totally unable to work at this time. However, the medical records do establish that claimant is unable to perform work that requires constant standing and walking.

(11) Claimant has not applied for federal disability benefits (SSI) with the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] in the Hearing Request:

Claimant is a 62-year-old female who was hospitalized in [REDACTED] for Atrial fibrillation, hypertension, diabetes mellitus, and hyperlipidemia. Claimant is significant for PTCA/status post stent placement in [REDACTED] and cardiac surgery. Additionally, she suffers from shortness of breath, difficulty with vision, frequent pain that radiates into her lower extremities and requires assistance with ADLs.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled medium work. Since claimant's past work (customer service representative) was sedentary, the department thinks that claimant pertains to the capacity to perform her past relevant work.

The department denied MA-P based on claimant's ability to perform past work.

LEGAL BASIS

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 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).

The 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 is 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, are not disabled regardless of medical condition, age, education and 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 that she has an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all basic work activities. 20 CFR 416.909.

Since the severity/duration requirement is a *de minimus* requirement, claimant 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.

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 previously worked as a customer service representative for [REDACTED]. Claimant's work as an insurance representative was semi-skilled sedentary work.

The medical evidence of record establishes that claimant has a limited ability to stand and walk due to her coronary artery disease. In addition, the claimant does not have the ability to perform repetitive heavy lifting.

However, since claimant's previous job as a customer service representative for insurance company was sedentary work, she is physically able to return to her previous job as a customer service representative.

Therefore, the claimant does not meet 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 combined mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, the claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on her coronary artery disease, diabetes, high blood pressure, poor vision, neuropathy, and arthritis. However, these diagnoses do not preclude all employment.

Third, claimant alleges disability based on arthritis/neuropathy and chronic pain. During the hearing, claimant testified that a major impediment to her return to work was her neuropathy and pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P purposes.

The Administrative Law Judge concludes that claimant's testimony about her pain and neuropathy 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 physical impairments, her neuropathy and her pain. Claimant currently performs many activities of daily living, has an active social life with her daughter and her grandchildren 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/semi-skilled sedentary work (SGA). In this capacity, she is able to work as a ticket taker at a theater, as a parking lot attendant and as a telemarketing representative. She is also able to work in her prior job as a customer service representative for an insurance company.

Based on this analysis, the department correctly denied claimant's MA-P application, using 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 disability requirements under PEM 260/261.

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

SO ORDERED.

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

Date Signed: March 27, 2009

Date Mailed: March 27, 2009

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

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cc:

