

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: 2009-6941
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 10, 2009
Lenawee 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 February 10, 2009, in Adrian. Claimant personally appeared and testified. Claimant was represented by [REDACTED].

The department was represented by David Long (FIS).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on February 11, 2009. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued a 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 (September 29, 2008) who was denied by SHRT (December 30, 2008) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for June, July, and August 2008.

(2) Claimant's vocational factors are: age—25; education—high school diploma; post high school education—three semesters at [REDACTED]; work experience—head cashier at [REDACTED], housekeeper at [REDACTED], and cashier at a chocolate store.

(3) Claimant has not performed substantial gainful activity (SGA) since June 2008 when she was head cashier for [REDACTED].

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

- (a) Joint pain;
- (b) Juvenile rheumatoid arthritis;
- (c) Status post right hip replacement (August 2008);
- (d) Status post left hip replacement (2006);
- (e) Sleep dysfunction;
- (f) Hypertension (HNT);
- (g) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (December 30, 2008)

SHRT decided that claimant was not eligible for MA-P/SDA due to lack of duration under 20 CFR 416.909. SHRT considered Listings 14.09, 4.04, 12.04, 12.06, and 12.08.

SHRT denied MA-P/SDA because claimant's medical conditions improved with treatment, and are not expected to prevent all work for 12 months from the time of surgery.

* * *

(6) The claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing (sometimes), cooking (sometimes), dishwashing (sometimes), light cleaning (sometimes), vacuuming, grocery shopping (needs help). Claimant does not use a cane, walker, or a wheelchair. She uses a shower stool approximately on a daily basis. She wears braces on her left knee 20 times a month. Claimant received inpatient hospital services in [REDACTED] at [REDACTED] for treatment of complications related to her right hip replacement.

(7) Claimant has a valid drivers' license and drives an automobile approximately three times a month. Claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) A [REDACTED] note was reviewed.

The physician provided the following background:

Claimant is a 25-year-old female presenting today for possible bladder infection. She has been having symptoms of dysuria, frequency, and urgency for the past several days. She has a history of recurrent urinary tract infection thought to be related to Medication management of her juvenile rheumatoid arthritis and the medication and side affects of immune suppression. She does describe having a

decrease in fluid intake over the last week in regards to her water intake and does tend to have a high caffeine intake and she does admit to this over the last several weeks as well. She also has been having some ongoing problems with vulvar itching, irritation and was seen here several weeks ago with a diagnosis of vaginitis most likely being caused by yeast and was treated with Diflucan with three doses. She states she had an improvement, but not complete eradication of the yeast symptoms and again she attributes these two chronic symptoms to immuno suppression medication.

The physician provided the following assessment: urinary tract infection.

- (b) A January 7, 2009 hospital note was reviewed. The nurse practitioner (MSN) provided the following background:

Claimant is a 25-year-old female with a history of juvenile rheumatoid arthritis, status post hip replacement, who comes to [REDACTED] to follow up on depression. Claimant states that she has been taking her Prozac dose on a daily basis. She feels it has improved her symptoms somewhat; however, she feels that she is still depressed. She states that five out of the last seven days, she has felt down, depressed, or hopeless. She denies any irritability or difficulty concentrating. She states she has had occasional thoughts of ending her life; as she feels that she is a burden on others, however, has no plan to carry that out. She states her appetite is good and feels that she is eating well; however, she continues to have difficulty with sleep. Sometimes, she feels like her life is hopeless as she cannot do many of the activities that someone her age with arthritis could do. She is not currently working and is on disability. She has recently obtained a computer and is thinking about taking online classes. She also feels discouraged in that she has not been able to get in to see her rheumatologist and she is having a lot of difficulty managing her pain, especially in her left knee. As she recently underwent a total hip replacement in August, she is aware that she will also need a knee replacement, but this won't likely not occur for more than one year. She is not currently in a counseling relationship; however, she would be open to starting.

* * *

PERSONAL HISTORY:

Claimant is single. She is living in her parents' home, and does have help around the house through her friends. Her parents are currently living in Indiana due to her father's job transfer, and this has been a struggle, but it is getting more manageable.

* * *

ANALYSIS:

Depression, suboptimal control.

* * *

- (c) An [REDACTED] progress note was reviewed. The physician provided the following background.

This is a 24-year-old female with juvenile rheumatoid arthritis, who presents to the emergency department with nausea, vomiting and diarrhea. Claimant underwent total hip arthroplasty, August 13, by [REDACTED]. She was then admitted to the hospital to [REDACTED] from August 19 to the 22nd for nausea, vomiting. Patient states that she felt well for approximately one week after being discharged from the hospital. Two days ago, she developed nausea, lightheadedness, and dizziness. Yesterday, she developed two episodes of nonbloody, nonbilious emesis. She states that since then she has not had any oral intake, including her medications. Over the past two days, she has had ten episodes of bloody diarrhea. She has also had a fever with a TMAX of 100.7. She developed diffused abdominal pain after vomiting. She denied any urinary changes. Due to her inability to tolerate any of her medications, she has not had her Coumadin, oral antibiotics, pain medications, or her rheumatoid arthritis medications. She ranks her right hip pain as 7/10.

* * *

The physician made the following diagnosis:

- (1) Intractable nausea and vomiting;
- (2) Fever;
- (3) Diarrhea;
- (4) Post-op day #16, status post right total hip arthroplasty.

The physician did not state that claimant was totally unable to work.

(9) There is no probative psychological evidence in this record to establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Also, claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. Claimant states that she is totally disabled due to the sequelae of her recent right hip total replacement. However, none of the reports from the [REDACTED] state that claimant is totally unable to work due to the sequelae of her August 2008 right hip replacement.

(11) Claimant has not applied for federal disability benefits.

(12) Claimant testified that her family doctor has not released her to return to work.

However, there is no documentation of this in the record.

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 is able to perform normal work activities on a complete recovery from her August 2008 surgery is expected.

The department denied claimant's application for benefits due to a lack of duration under 20 CFR 416.909.

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).

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).

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/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 is 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 the claimant has impairments which meet the SSI definition of severity/duration.

Claimant must establish an impairment which is expected to result in death, has lasted for at least 12 months, and totally prevents all current work activities. 20 CFR 416.909.

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

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.

However, SHRT evaluated claimant's eligibility based on Listings 14.09, 4.04, 12.04, 12.06, 12.08. Claimant does not meet any of the Listings considered.

Claimant has not provided any medical evidence which specifically addresses the SSI Listings. Furthermore, there is no medical evidence which specifically addresses and meets any of the SSI Listings. Therefore, claimant has not met the burden of proof under Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant last worked as head cashier for [REDACTED]. This was sedentary work.

Medical evidence of record establishes that claimant is experiencing sequelae from her August 2008 right total hip replacement. However, claimant's August 2008 surgery does not prevent her from returning to her previous job as a cashier for [REDACTED].

Therefore, claimant does not meet the Step 4 disability test.

STEP #5

The issue at Step 5 is whether claimant meets 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 impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on depression. The medical records in evidence do not contain a psychological assessment. Furthermore, claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity. Taking the medical record as a whole, claimant has not established a severe mental impairment that precludes all work activities.

Second, claimant alleges disability based on the sequelae of her August 2008 right total hip replacement. While claimant's 2008 surgery would preclude claimant from lifting heavy amounts, constant standing and walking, it does not preclude all employment.

Finally, claimant testified that a major impediment to her return to work was her body pain secondary to her juvenile onset rheumatoid arthritis. 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 the sequelae of her recent hip replacement in combination with her depression. Claimant currently performs many activities of daily living, drives a car on a regular basis, has an active social life with her friends 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 physically able to work as a ticket taker for a theater, as a parking lot attendant, as a greeter at [REDACTED] and as a telemarketing representative. She is also able to return to her previous job as head cashier at [REDACTED].

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 disability 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: November 9, 2009

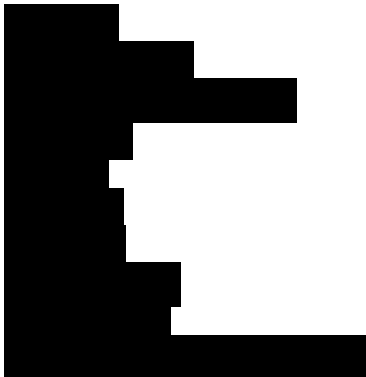
Date Mailed: November 10, 2009

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

cc:

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