

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: 2009-8511  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 26, 2009  
Montcalm 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 March 26, 2009 in Stanton. Claimant personally appeared and testified under oath.

The department was represented by Richard Stilton (FIM) and Angela Ross (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was received and sent to the State Hearing Review Team (SHRT) on March 19, 2009.

Claimant waived the timeliness requirement so that his 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/SDA (October 20, 2008) who was denied by SHRT (January 8, 2009) due to claimant's ability to perform unskilled light work. Claimant requested Retro-MA for July, August and September 2008.

(2) Claimant's vocational factors are: age--51; education—high school diploma, post-high school education--none; work experience—machine operator for [REDACTED]; security guard for [REDACTED], cashier for gas station.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since September 2008 when she worked as a machine operator for [REDACTED].

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

- (a) Status post 2 blood clots;
- (b) Status post heart attack (2008);
- (c) Status post heart cauterization.

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

**OBJECTIVE MEDICAL EVIDENCE (JANUARY 8, 2009)**

SHRT thinks that claimant is capable of performing light unskilled work.

SHRT evaluated claimant's impairments using SSI Listings 3.02, 3.03 and 4.04.

\* \* \*

(6) Claimant lives with her daughter and 3 grandchildren. She performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light

cleaning, vacuuming (sometimes), laundry (needs help), and grocery shopping (sometimes).

Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant was hospitalized for inpatient treatment in November 2008 (heart catheterization) and in March 2009 (pneumonia and pleurisy).

(7) Claimant has valid driver's license and drives an automobile approximately 20 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

- (a) A [REDACTED] and [REDACTED] was reviewed. The physician provided the following background.

**CHIEF COMPLAINT:**

Claimant is a 51-year-old white female who presented to the Emergency Room yesterday with complaints of chest discomfort and shortness of breath.

**HISTORY:**

Bilateral lower extremity ultrasounds and spiral chest CT was performed, which were all negative, and the patient was discharged. The following morning, today, [REDACTED] reviewed the spiral CT from [REDACTED] and disagreed, and felt the patient had a small pulmonary embolism (PE) and the patient was brought back to the Emergency Room for admission.

Claimant had an episode of pulmonary embolism on 11/24/2007, taken care of by myself and [REDACTED]. Claimant finished a full 6 month course of Coumadin. She denied any recent long car rides or any injuries to her lower extremities. She has no family history of blood clots (with the exception of her brother after a fall and cast placement. She has no frequent miscarriages.

\* \* \*

**IMPRESSIONS:**

- (1) Recurrent pulmonary embolism;
- (2) History of pulmonary embolism in November of 2007;

- (3) History of COPD;
- (4) History of anxiety and depression;
- (5) GI Prophylaxes.

\* \* \*

- (b) A June 17, 2008 narrative consultation report was reviewed.

The physician provided the following background:

I had the pleasure of seeing claimant in follow-up at the [REDACTED] on June 17, 2008. I had the chance to meet claimant back on January 29, 2008. She is a 50 year-old woman with a history of acute pulmonary embolism (on Cumadin), chronic obstructive pulmonary disease (COPD); and obstructive sleep apnea. She returns today stating that overall, her symptoms have not changed. She continues to be dysthenic with exertion with excessive wheezing and mucus production. She does, however, think that her Advair and Spiriva are helping. She says that the wheezing is partly related to her new job where she has to wear a fully protective suit in a dry, warm environment. She is cutting-down on her smoking and she is now down to only a few cigarettes. I explained that that might have caused some rebound in secretions. She also continues to complain of severe, daytime fatigue and sleepiness, despite the use of a C-Pap, which she has been fairly compliant with overall. Her C-Pap is set at 7CWP.

\* \* \*

#### ASSESSMENT;

- (1) Chronic obstructive pulmonary disease (COPD);
- (2) Acute pulmonary embolism;
- (3) Obstructive sleep apnea.

\* \* \*

- (c) A [REDACTED] was reviewed.

The gastroenterologist provided the following history.

Thank you for requesting a gastrointestinal consultation for claimant for epigastric pain. Claimant reports she developed pain in the upper middle area of her abdomen approximately one and one-half months ago. It radiates around to her back and is constant. She is really unsure if it is worse with food. It is about an 8 to 9 out of 10. She is currently taking Prilosec PID, which has not alleviated her pain.

\* \* \*

Claimant also reports onset of complication approximately one and one-half months ago. She is moving her bowels infrequently and reports her last bowel movement was one week ago.

\* \* \*

IMPRESSIONS:

- (1) New onset epigastric pain;
- (2) New onset of constipation;
- (3) Dysphagia.

\* \* \*

- (d) A [REDACTED] was reviewed.

The physician provided the following history:

This is a 50 year-old female who developed left back and chest pain on and off approximately 2 weeks ago, which worsened significantly last night at work. She then became short of breath. She could not relieve her pain. She came to the Emergency Department for evaluation and was found to have a pulmonary embolism with pulmonary infarction. She denies hemoptysis. She states she does have a cough but states she has had a chronic cough for a long time, although her significant other thinks that her cough has been worse in the last couple of days. She does have a significant family history of a brother who was diagnosed with DVT and pulmonary embolism at age 45.

\* \* \*

The physician provided the following impression:

- (1) Pulmonary embolism with small pulmonary infarction in the lingula.
- (2) Chronic obstructive pulmonary disease;
- (3) Hypertension;
- (4) Depression/Anxiety;
- (5) Chronic peripheral edema.

(9) There are no psychological reports in the record to establish a severe mental condition. Claimant does not allege a mental impairment as the basis for her disability.

Claimant did not provide a DHS-49D or a DHS-49E to establish 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. A recent history and physical performed at [REDACTED] provides the following impressions:

- (1) Recurrent pulmonary embolism;
- (2) History of pulmonary embolism in November of 2007;
- (3) History of COPD;
- (4) History of anxiety and depression.

The consulting physicians who submitted medical reports do not state that claimant is totally unable to work.

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

## **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 has the Residual Functional Capacity (RFC) to perform a wide range of light work.

The department evaluated claimant's impairments using SSI Listing 3.02, 3.03 and 4.04.

### **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).

**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 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 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 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 that she has an impairment which is expected to result in death, or has existed for 12 months, thereby preventing all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P, 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. The department evaluated claimant's impairments using SSI Listings 3.02, 3.03 and 3.04. Claimant did not meet any of the applicable Listings.

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. Claimant previously worked as a machine operator. This was light work.

There are no medical examination reports in the record which clearly state that claimant is totally unable to perform her prior work. Also, claimant's Residual Functional Capacity has not been clinically established.

Since claimant's medical documentation does not establish that she is unable to perform her prior work as a machine operator, she 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 impairments meet the department's definition of disability for MA-P purposes.

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

Second, claimant alleges disability based on chronic pulmonary embolisms and a heart catheterization.

The medical record does not contain a recent DHS-49 which indicates a reduction in claimant's ability to perform basic work activities (lift, stand, walk, and push-pull).

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 an extensive list of activities of daily living, has an active social life with her daughter and grandchildren and is computer literate. Claimant drives an automobile approximately 20 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 at a theatre, as a parking lot attendant, and as a greeter at [REDACTED].

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

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: August 10, 2009

Date Mailed: August 11, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/sd

cc:

