

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: 2009-9065
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 8, 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, a telephone hearing was held on April 8, 2009, in Port Huron. Claimant personally appeared and testified under oath.

The department was represented by Dedra Mitchell (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 mailed to the State Hearing Review Team (SHRT) on April 8, 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 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 (June 6, 2008) who was denied by SHRT (January 14, 2009) based on claimant's failure to provide sufficient medical evidence needed in order to evaluate her disability. Claimant requests retro MA for March, April and May 2008.

(2) Claimant's vocational factors are: age—43; education—8th grade; post high school education—GED; work experience—party decorator, deli worker/cook/counter aide, cashier for [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since 2008 when she worked as a party decorator and consultant.

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

- (a) Status post brain surgery (April 2008);
- (b) Brain aneurysms;
- (c) Chronic headaches;
- (d) Dizziness;
- (e) Short-term memory dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (January 14, 2009)

SHRT decided that claimant was currently receiving SDA benefits due to qualifying under an SSI listing.

SHRT subsequently reviewed claimant's eligibility for MA-P/SDA and denied benefits due to lack of duration.

SHRT evaluated claimant's impairments using SSI Listings 11.01, 1.02 and 1.04.

SHRT requested an internal physical consultative examination by an internist. Claimant supplied a [REDACTED] evaluation dated [REDACTED].

(6) Claimant lives with her 19-year-old son and performs the following activities of daily living: dressing, bathing, dish washing (sometimes), mopping (sometimes), vacuuming (sometimes), and grocery shopping (needs help). Claimant does not use a cane, walker, a wheelchair, or a shower stool. She does not wear braces. Claimant received inpatient hospitalization for 30 days in April 2008 for treatment of multiple brain aneurysms.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is not computer literate.

(8) The following mental/physical evaluations were reviewed:

(a) A February 12, 2008 physiatrist's report was reviewed.

The physiatrist provided the following background:

I had the opportunity to see claimant for a comprehensive recheck. Claimant is known to me with chronic pain. She was last seen one year ago. She is a 42-year-old single right-handed, female who lives in a first floor apartment. She smokes a little more than a pack a day and has a drink perhaps every other week. She reports she is no longer working, as the store went out of business. Review of systems is positive for knee pain, stomach irritation and lumbar disc disease. She was previously hospitalized for knee arthroscopy by [REDACTED]. Family medical history is positive for breast cancer. She has no known allergies. She is currently on medication of Vicodin ES, tid-prn.

The physiatrist provided the following impressions:

- (1) Polyarthritis including shoulders, hips and knees;
- (2) Degenerative disc disease.

(b) A June 24, 2008 Medical Examination Report (DHS-49) was reviewed. The family practice physician provided the following diagnoses: (a) very large and serious communicating artery aneurysm that ruptured, 5/2/2008.

The physician noted the following physical 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. No limitation on sitting. Claimant is able to use her hands/arms for simple grasping, reaching and fine manipulating. She is able to use her feet/legs normally.

The physician reported mental limitations as follows:
(a) Comprehension;
(b) Sustained concentration.

(c) A [REDACTED] examination was reviewed.

The medical consultant provided the following background:

In April 2008, claimant was airlifted to [REDACTED], having been evaluated at a local emergency center, where a CT scan revealed she had an intracranial bleed. The enclosed report indicates she had 'a giant complex anterior communicating artery aneurysm' and a 'small anterior choroical aneurysm' on the right side. The reviewer is referred to the enclosed discharge summary on May 20, 2008, the patient having been admitted on April 30, 2008. Her insurance company coverage ceased one month after she was (**inaudible**). She currently has generalized aching and requires the support of her husband or another person in all her attempts of ambulation. She currently takes Vicodin tid for pain, Vitamin B1, Zantac for dyspepsia, Flexeril, Halclon for sleep, Xanax for anxiety and Motrin as an anti-inflammatory.

She has had arthralgias, progressive for years, particularly affecting the intermediate to large joints, i.e., knees, hips, etc. She uses Motrin 800 as an anti-inflammatory.

The medical consultant provided the following conclusions:

(1) Intracranial bleed. There was subarachnoid hemorrhage secondary to 'three' aneurysms. The summary of the hospitalization and surgery is enclosed for details. The examination revealed diffuse limitations of range of motion, absent right knee jerk, diminished strength in all four extremities and limited straight leg raise. Limitations in her movements were probably secondary to her arthritis, as well as her neurological abnormalities

probably affects her intracranial bleed and aneurysms.

- (2) Degenerative joint disease: This is diffuse and manifests with diffusely impaired range of motion. Muscle tone is diminished. Every movement was terminated with 'I hurt so much.'

* * *

(9) There is no probative psychiatric evidence to establish an acute "non-exertional" (mental condition) expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not allege a mental impairment as the basis for her disability. Claimant did not provide a DHS-49D or a DHS-49E. Although claimant alleges a mental impairment as the basis for his disability, she did not provide any clinical evidence of a disability.

(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 [REDACTED] provided the following diagnoses: Intracranial bleed. (This was repaired by surgery at the [REDACTED].)

The medical consultant noted: diffuse limitations in range of motion, absent right knee jerk, diminished strength in all four extremities and limited straight leg use. He further stated that the limitation in claimant's movement was probably secondary to her arthritis; degenerative joint disease: This is diffuse and manifests with diffusely impaired range of motion. Muscle tone is diminished. Every movement was terminated with 'I hurt so much.'

The medical consultant did not state that claimant was totally unable to work based on the combination of her impairment.

(11) Claimant recently applied for Social Security benefits. Her application was denied by SSA; claimant filed a timely appeal.

(12) Claimant currently receives State Disability Assistance. SDA was opened in July 2008 with a MRT review scheduled for October 2008.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/retro based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has failed to provide adequate medical evidence in order to evaluate claimant's allegation of disability.

The department notes: Claimant previously received SDA benefits due to qualifying under an SSI listing. SHRT further notes that MA-P benefits were denied in August 2008 due to lack of severity and duration.

During its review, SHRT considered the following SSI Listings: 11.01, 1.02, 1.04.

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 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.

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. Claimant's impairments were evaluated using SSI Listings 11.01, 1.02, and 1.04. Claimant's impairments do not meet the requirements of the applicable 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 party consultant/decorator , as a deli cook and counter worker, and as a cashier for [REDACTED]. Claimant's work as a party decorator and cashier was sedentary work. Claimant's work as a deli cook and counter aide was sedentary/light work. The medical evidence of record establishes that claimant currently suffers from dizziness and chronic headaches, which apparently are related to her brain surgery. Claimant also reports that she has some short-term memory dysfunction and this report was corroborated by the family practice physician in his DHS-49 (June 24, 2008) report. The family physician stated that claimant has limitations in comprehension and sustained concentration.

The memory limitations which claimant reported, which have been corroborated, would preclude her from performing skilled work as a cashier. 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 the medical/psychiatric evidence in the record, that her combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges a mental disability, based on her short-term memory dysfunction and a slight deficit in comprehension and sustained concentration. There are no psychiatric/psychological reports in the record to establish the severity of or the existence of a severe mental impairment. The only clinical evidence which supports claimant's reports is the DHS-49 provided by a family practice physician. The physician states that claimant has

limitations in comprehension and sustained concentration. The DHS-49, absent other persuasive clinical evidence, does not establish a severe impairment. Furthermore, claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on status-post brain surgery to repair multiple aneurysms, and degenerative joint disease. The degenerative joint disease would preclude claimant from performing lifting, which is usually required in working in a deli. Although claimant's recent brain surgery and history of aneurysms does preclude her from performing work that requires heavy lifting, the medical evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to her return to work was her impaired range of motion, secondary to her degenerative joint disease/pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P purposes.

The Administrative Law Judge finds 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 combination of impairments. Claimant performs a significant number of activities of daily living, has an active social life with her 19-year-old son and her grandson, and is able to take care of her Chihuahuas. 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 theatre, as a parking lot attendant, and as a greeter for [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: September 28, 2009

Date Mailed: September 29, 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:

