

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: 2010-10783
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 27, 2010
St. Joseph 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 January 27, 2010, in Centreville. The claimant personally appeared and testified under oath.

The department was represented by Ellen Kummerl (FIM) and Christine Persock (ES).

By agreement of the parties, the record closed on January 27, 2010.

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/SDA applicant (September 28, 2009) who was denied by SHRT (December 18, 2009) due to claimant's ability to perform light unskilled work. SHRT relied on Med-Voc 202.20 as a guide.

(2) Claimant's vocational factors are: age--48; education--high school diploma; post high school education--course work at [REDACTED] (medical transcription); work experience--housekeeper at a long-term care center, group home supervisor, and factory worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a housekeeper in a long-term care center in 2005.

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

- (a) Chronic back pain; and
- (b) Osteoarthritis in back.

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

OBJECTIVE MEDICAL EVIDENCE (December 18, 2009)

SHRT decided that claimant was able to perform unskilled light work. SHRT evaluated claimant's impairments using SSI Listing 1.04. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on 20 CFR 416.967(b) due to claimant's ability to perform light work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, cooking (sometimes), dishwashing (sometimes), light cleaning (sometimes), laundry (needs help), and grocery shopping (sometimes). Claimant does not use a

cane, walker, or a wheelchair. She uses a shower stool 30 times a month. Claimant does not wear braces. Claimant was not hospitalized as an in-patient in 2009 or 2010.

(7) Claimant does not have a valid driver's license and does not drive. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) A September 23, 2009 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnosis: Lumbago and status post cerebral vascular accident.

The physician states that claimant is able to lift less than ten pounds; he is able to sit for about six hours in an eight-hour day. She has normal use of her hands/arms and normal use of her feet/legs.

The internist does not report that claimant is totally unable to work.

- (b) A September 30, 2009 Medical Needs Report (DHS-54A) was reviewed. The physician provided the following diagnoses: Lumbago. Claimant does not require special transportation. Claimant does not require a person to accompany her to medical appointments. Claimant has a medical need for assistance with shopping.

The reporting physician reports that claimant is able to perform her usual occupation (seated work). Claimant can work at any job that involves seated work.

(9) The probative medical evidence does not establish an acute mental condition 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.

(10) The probative medical evidence, standing alone, 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 records do show that claimant had

aneurysm surgery. A recent MRI report states, “No other question aneurysm. No significant stenosis, occlusion or spasm. Limited view of cervical artery is unremarkable.” The internal medicine consultants who have submitted reports to the department do not state that claimant is unable to work. One consultant reported that claimant is able to perform seated work.

(11) Claimant thinks she is eligible for MA-P/SDA because she has chronic back pain and osteoporosis.

(12) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration (SSA). Her claim is currently pending.

CONCLUSIONS OF LAW

CLAIMANT’S POSITION

Claimant is a 48-year-old female with a high school education and subsequent study involving medical transcription. She is status post cranial vascular accident/repair.

DEPARTMENT’S POSITION

The department thinks that claimant has the residual functional capacity (RFC) to perform unskilled light work.

The department denied benefits based on Med-Voc Rule 202.0.

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).

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 purpose. PEM/BEM 260 and 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 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. PEM/BEM 260, pages 8 and 9.

Claimants, who are working and performing Substantial Gainful Activity (SGA), are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The Medical/Vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 eligibility test.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Unless an impairment is expected to result in death, it must have existed, or be expected to exist, for a continuous period of at least 12 months from the date of application. 20 CFR 416.909.

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

If claimant does not have an impairment or combination of impairments which profoundly limit her physical or mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c). SHRT found that claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets the Step 2 eligibility 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.

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 housekeeper in a long-term care facility. This was medium work.

The Medical/Vocational evidence of record shows that claimant has a severely reduced ability to lift and also a slightly reduced ability to stand and walk. A consulting physician stated that claimant is not able to lift more than ten pounds and not able to sit more than six hours in an eight-hour day. However, she has normal use of her hands/arms and feet/legs.

The Medical/Vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Notwithstanding claimant's physical limitations (a significantly impaired ability to lift), claimant is able to do simple unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant, or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to her return to work was chronic back pain. 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 credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

It should be remembered that even though claimant has a severely reduced ability to work, she does have significant residual work capacities. The consulting internist states that claimant is able to sit about six hours in an eight-hour day and has normal use of her arms and hands as well as her feet and legs.

In short, this Administrative Law Judge is not persuaded that claimant is totally unable to work based on her back pain secondary to her spinal dysfunction. Claimant currently performs several activities of daily living and has an active social life with her daughter and other relatives. The collective medical evidence shows that claimant is able to perform unskilled sedentary work (SGA).

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on insufficient medical evidence.

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. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis as described above.

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: August 9, 2010

Date Mailed: August 10, 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

2010-10783/JWS

cc:

