

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-10894

Issue No: 2009

Case No: [REDACTED]

Hearing Date:

January 20, 2010

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 20, 2010, in Kalamazoo. The claimant personally appeared and testified under oath. The claimant was represented by [REDACTED], from [REDACTED].

The department was represented by Chris Schippers (ES).

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 applicant (July 29, 2009) who was denied by SHRT (December 16, 2009) due to claimant's ability to perform her past work. Claimant requests retro MA-P for April, May and June 2009.

- (2) Claimant's vocational factors are: age--53; education—high school diploma; post high school education—took course work to qualify as a nurse's aide; work experience—DHS day care provider, long-term care aide and food service worker for [REDACTED].
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when she worked as a DHS day care provider for her grandchildren.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Deep venous thrombosis;
 - (b) Herniated discs;
 - (c) Hip pain;
 - (d) Left arm blood clot;
 - (e) Back dysfunction;
 - (f) Status post left leg fracture;
 - (g) Unable to stand for long periods;
 - (h) DVT of the left upper extremity;
 - (i) Left shoulder pain secondary to calcific tendonitis;
 - (j) Herniated disc;
 - (k) Spinal stenosis; and
 - (l) Limited range of motion with Upper extremities due to pain.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (December 16, 2009)

SHRT decided that claimant was able to perform her past work as a custodian. SHRT considered the following Listings: 4.11, 1.04, and 1.06.

* * *

- (6) Claimant lives with her elderly mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing (sometimes), laundry (needs help), and grocery shopping (needs help). Claimant uses a cane approximately twice a month. She uses a wheelchair (Amigo) when she goes grocery shopping. She uses a shower stool approximately 15 times a month. She does not use a walker. She wears braces on her waist approximately 20 times a month. Claimant received in-patient hospital care in 2009 for blood clots in her left arm. She was not hospitalized in 2010.

(7) Claimant has a valid driver's license and drives an automobile approximately three times a month. Claimant enjoys reading, and receives visitors in her house approximately 30 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] physical examination report was reviewed.

The internist reports the following chief complaints:

Low back pain, problems with heart, hypertension, depression and deep vein thrombosis of the left upper arm.

Claimant has worked multiple jobs in a factory, food service and in custodial. She last worked in day care and stopped working in February 2009, because her patient no longer needed her help.

Her back pain began with a fracture of the left tibia. In 1992, she was told by her physician that she also had spinal stenosis. She is in pain in her lower back 24/7. It tends not to radiate. She does not have medication for pain, but takes a relative's Vicodin when the pain is too severe. Walking and standing are both limited to 20 to 30 minutes.

She was hospitalized in May 2009 because of left arm pain. She apparently developed a deep venous thrombosis in the upper arm which was corrected by physicians during her hospitalization. She is uncertain how it was corrected, but the pain disappeared. At the time, she was told she had heart disease. She is unsure of the diagnosis. The only symptom she has is 'fluttering' of her heart. She is unsure if she takes any medication for the problem or not.

* * *

PHYSICAL EXAMINATION

MUSCULOSKELETAL:

There was no evidence of joint laxity, crepitance, or effusion. Grip strength was diminished to 70%. Dexterity was unimpaired. The patient could pick up a coin, button clothing, and open a door. She was unable to perform most range of motion requests because she was in 'such pain' and her arthritis was 'so bad.' The patient had mild difficulty getting on and off the examination table, moderate difficulty heel and toe walking, and was unable to squat or hop. She could not bend at the trunk. Knee flexion was done in the supine position.

NEURO:

Cranial nerves were intact. Sensory appeared intact to light touch. Reflexes were 2+ and symmetrical. Plantar responses were flexor. Romberg testing was negative. The patient walked with a normal gait without the use of an assistive device. Straight leg raising was accomplished to 30 degrees on the right and 10 degrees on the left.

The consulting internist provided the following conclusions:

- (1) Low back pain.

This began with a fracture of her left tibia and fibula. She was told in addition that she has spinal stenosis. Range of motion was absolutely uncertain since she was unable to flex or extend her dorsolumbar spine. Other range of motion maneuvers were impaired because she 'can't' or because of impaired effort. She had essentially no strength lifting her left thigh off the table against the resistance of my hand.

- (2) Some cardiac disorder.

She described the only symptom she has as 'fluttering.' Cardiac exam was unremarkable. She did not have a catheterization. When she had her deep venous thrombosis of the left arm, she was told she had heart disease. She did not bring any of her medications today.

- (3) Deep venous thrombosis of the left arm.

The etiology of this is uncertain. Apparently, she went to the hospital because of left arm pain. Under anesthesia, something was corrected. She has no scars. She said it was done by needles, but the pain was relieved.

- (4) Co-morbidities:

Depression; and hypertension, her blood pressure today was elevated.

* * *

NOTE: The examining consulting internist did not state that claimant was unable to work.

- (9) Claimant does not allege a severe mental impairment as the basis for her disability. There were several references to depression in the medical evidence. However, claimant did not mention depression as one of her primary concerns. Claimant's representative did not raise depression in his list of impairments on the Hearing Request form. Finally, claimant did not provide 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. The medical records do establish that claimant has low back pain, that her heart "flutters," and that she has had several incidents of "deep venous thrombosis of the left arm."
- (11) Claimant recently applied for federal disability benefits (RSDI/SSI) with the Social Security Administration. SSA recently denied her claim. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis

and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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 physical impairments meet the department's definition of disability for MA-P purposes. BEM 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 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 Step 1.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Claimant must establish an impairment which is expected to result in death, has existed for 12 months and/or totally prevents all current work activities. 20 CFR 416.909.

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

Using the *de minimus* standard, claimant meets Step 2.

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.

However, SHRT evaluated claimant's eligibility using SSI Listings 4.11, 1.04 and 1.06. Based on these listings, claimant does not qualify for MA-P.

Therefore, claimant does not meet Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant was last employed as a DHS day care provider for her grandchildren. This was light work. Because of claimant's combination of impairments, deep venous thrombosis, hip pain, and possible blood clot in her left arm, in combination with claimant's other impairments, she is unable to perform the constant lifting and standing that child care work requires. This means claimant is unable to return to her previous work as a DHS child care provider.

Therefore, claimant meets Step 4.

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 does not allege disability based on a mental impairment.

Second, claimant alleges disability based on a combination of impairments (DVT of left upper extremity, intractable left shoulder pain secondary to calcific tendonitis, herniated disc and spinal stenosis). The consulting physician who examined claimant did not provide a clear diagnosis (other than low back pain) that would support a finding of total disability as required by the MA-P regulations.

Third, claimant alleges disability due to low back pain and left arm pain (deep venous thrombosis). 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 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 impairments. Currently, claimant performs many activities of daily living, entertains visitors in her home on a regular basis and is able to walk approximately two blocks.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform unskilled sedentary work (SGA). In this capacity, she is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Also, it is significant that there is no "off work" order from claimant's primary care physician in the record.

The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it decided claimant was not eligible for MA-P. Furthermore, claimant did not meet her burden of proof to show the department's denial of her application was reversible error.

Accordingly, the department correctly denied claimant's MA-P application based on Step 5 of the sequential analysis 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 BEM 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 15, 2011


Date Mailed: August 15, 2011

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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