

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: 2010-12904
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 23, 2010
Genesee 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 February 23, 2010, in Flint. Claimant personally appeared and testified under oath.

The department was represented by Tavia Davis (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude from her substantial gainful work, **continuously**, for 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for 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 SDA applicant (September 25, 2009) who was denied by SHRT (January 7, 2010) based on claimant's ability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.10.

(2) Claimant's vocational factors are: age--51; education--7th grade; post high school education--none; work experience--shift supervisor for [REDACTED] and inventory technician.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since May 2009 when she went on medical leave from [REDACTED].

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

- (a) Status post disc surgery (February 17, 2010);
- (b) Back dysfunction;
- (c) Spinal stenosis;
- (d) Manic Depression.

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

OBJECTIVE MEDICAL EVIDENCE (January 7, 2010)

SHRT decided that claimant is able to perform unskilled light work under 20 CFR 416.967(b). SHRT evaluated claimant's disability using SSI Listing 1.04. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on Vocational Rule 202.10 and claimant's ability to perform unskilled light work.

* * *

(6) Claimant lives with her mother-in-law and performs the following Activities of Daily Living (ADLs): dressing (needs help) and bathing (needs help). Claimant does not use a cane, walker, or wheelchair. Claimant uses a shower stool. Claimant wears a neck brace on a daily basis.

(7) Claimant has a valid driver's license and drove an automobile regularly prior to her surgery in February 2010. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] report was reviewed. The physician provided the following assessment:

- (1) Interpretation of radiologic exam/tests.
- (2) Cervicalgia;
- (3) HNP without myelopathy;
- (4) Symptoms involving headache.
- (5) Spondylosis without myelopathy.

MRI of the cervical spine, dated 5/17/09 demonstrates severe central cervical stenosis (C3-6). There is a large left C5/6 disc herniation. There is moderate size right C4/5 disc herniation. MRI of the cervical spine dated 5/17/09 is normal.

MRI of lumbar spine, dated 7/04/06 demonstrates a broad-based disc bulge at L5-S1. There is severe facet arthropathy noted bilaterally at L5/S1.

She seemed apprehensive to proceed with a cervical laminectomy and lateral mass screws from C3-C6. I discussed the risks and indication of the surgery. She will attempt her cervical spine to strengthen.

* * *

(9) There is no clinical psychiatric or psychological evidence to establish a severe mental impairment in the record. Claimant thinks she has manic depression, but did not supply any clinical evidence to support her suspicion. Also 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 expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she is unable to perform a significant number of activities of daily living due to her surgery in February of 2010. However, claimant did not submit any statements from her surgeon indicating the period of time which she will need for recuperation.

(11) While the medical records show a severe central cervical stenosis from C3-C6, claimant's surgery successfully corrected this impairment.

(12) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied her application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to SDA based on her combination of impairments listed in Paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform a wide range of light unskilled work.

The department denial is based on Med-Voc Rule 202.10.

LEGAL BASE

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).

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 SDA purposes. PEM 261 "Disability," as defined by 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 disabled for SDA purposes.

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 an impairment which is expected to result in death, has existed for 12 months and/or totally prevents all basic work activities. 20 CFR 416.909.

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

Based on the medical record of evidence, claimant meets the severity requirements. However, claimant did not submit a statement from her surgeon which clinically establishes how long claimant's rehabilitation period will last. In the absence of a clear statement from the surgeon about claimant's period of rehabilitation, the Administrative Law Judge concludes that claimant does not meet the duration test required by SDA regulations.

Therefore, at this time, claimant does not meet the basic requirements for SDA eligibility because claimant has not properly documented the amount of time her rehabilitation from spinal surgery will take.

Based on this analysis, the department correctly denied claimant's SDA application based on Step 2 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 SDA requirements under PEM 261 at this time.

Accordingly, the department's denial of claimant's SDA application is, hereby,
AFFIRMED.

SO ORDERED.

/s/
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 7, 2010

Date Mailed: June 8, 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

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