

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: 2010-17528
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 27, 2010
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

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 May 27, 2010.

ISSUE

Did the department properly determine that Claimant did not meet the disability standard for Medical Assistance based on disability (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) On October 26, 2009, Claimant applied for MA-P and retro MA-P benefits.
- (2) On January 4, 2010, the Medical Review Team denied Claimant's request for MA-P benefits.

(3) On January 6, the department notified Claimant that she was denied MA-P benefits.

(4) On January 20, 2009, the department received Claimant's hearing request, protesting the denial of MA-P benefits.

(5) The State Hearing Review Team (SHRT) upheld the denial of MA-P benefits.

(6) Claimant applied for disability benefits based on having problems with her left foot, and she indicated having foot surgery on April 28, 2009. (Department Exhibit 1, p. 7)

(7) On April 28, 2009, Claimant underwent outpatient surgery consisting of plantar fasciotomy and excision of the left posterior heel spur with primary repair of Achilles tendon. (Department Exhibit 1, p. 18)

(8) The follow-up exam on August 18, 2009, revealed 5/5 muscle strength of the left foot with excellent range of motion and no increased pain with dorsiflexion of the foot, but Claimant had pain on direct palpation of the foot. (Department Exhibit 1, p. 20)

(9) The follow-up exam on September 9, 2009, revealed excellent range of motion of the left heel with greater than 10 degree of mobility noted in the dorsal direction with the knee extended and no increasing symptoms in the posterior heel area; and the doctor noted that everything was going very well except for the area on the back of the heel immediately medial to the incision. (Department Exhibit 1, p. 19)

(10) The follow-up exam on September 30, 2009 revealed: pain with palpation along the midline of the heel in the area of the incision as well as immediately medial to the incision on the posterior calcaneus itself; Claimant had 10 degree of ankle dorsiflexion with knee extended and flexed; externally the foot had a good appearance; and Claimant had no pain with palpation to the plantar aspect of the left heel or fascial band. (Department Exhibit 1, p. 18)

(11) Claimant is a 47 year-old female with a high school education and past relevant work experience as an assistant manager at [REDACTED] for 14 years; and Claimant went to Business School and became certified as an executive secretary. (Department Exhibit 1, p. 11)

(14) Claimant was not engaged in substantial gainful activity at any time relevant to this matter.

(15) Claimant filed an application for disability benefits with the Social Security Administration (SSA); however, SSA denied her application.

(16) Claimant has an appeal pending with SSA.

CONCLUSIONS OF LAW

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.

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).

Since Claimant was not engaged in substantial gainful activity at any time relevant to this matter, the analysis continues.

...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).

...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).

...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).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;

- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...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).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

Claimant applied for disability benefits based on having left foot problems. On April 28, 2009, Claimant underwent outpatient surgery consisting of plantar fasciotomy and excision of the left posterior heel spur with primary repair of Achilles tendon. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Claimant established that at all times relevant to this matter she had left foot problems which would affect her ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

Claimant failed to establish that she has a severe impairment which meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1. Therefore, the analysis continues.

Based on the objective medical evidence on the record, Claimant testified that her severe physical impairment involving her left foot prevented her from doing her past relevant work at

██████████ for a continuous period of at least one year. Claimant testified that she was an assistant manager at this restaurant for 14 years and was terminated after she went on long term disability due to left foot problems. Claimant established that her left foot pain compromises her ability to do her past relevant work which involves a significant amount of walking and standing. Therefore, the analysis will continue to determine Claimant's residual functional capacity or what she is able to do despite limitations. 20 CFR 416.945 and 20 CFR 416.961.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

This Administrative Law Judge finds that Claimant should be able to do at least sedentary work. Although Claimant testified that she does not have any office work experience, she has the skills to do sedentary work based on her own testimony. Claimant testified credibly that she went to business school and was certified as an executive secretary. Further, Claimant has the residual functional capacity to do sedentary work based on the objective medical evidence on the record. Claimant's follow-up exam on August 18, 2009, revealed 5/5 muscle strength of the left foot with excellent range of motion and no increased pain with dorsiflexion of the foot. The follow-up exam on September 9, 2009, revealed excellent range of motion of the left heel with greater than 10 degree of mobility noted in the dorsal direction with the knee extended and no increasing symptoms in the posterior heel area; and the doctor noted that everything was going very well except for the area on the back of the heel immediately medial to the incision. The follow-up exam on September 30, 2009 revealed: pain with palpation along the midline of the heel in the area of the incision as well as immediately medial to the incision on the posterior

calcaneus itself; Claimant had 10 degree of ankle dorsiflexion with knee extended and flexed; externally the foot had a good appearance; and Claimant had no pain with palpation to the plantar aspect of the left heel or fascial band. The level of foot pain that Claimant may be experiencing should not prevent her from doing sedentary work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Claimant is a young individual with a high school education and unskilled to semi-skilled work experience as an assistant manager at a restaurant. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Using Medical Vocational Rule 201.18 as a guideline, Claimant would be considered not disabled. According to this Medical Vocational Rule, a young individual under the age of 50, with just a limited educational background and unskilled work experience, limited to sedentary work, is not disabled.

In conclusion, Claimant does not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the department's MA-P and decision is upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined that Claimant did not meet the MA P disability standard.

Accordingly, the department's MA P decision is affirmed.

/S/

Marya A. Nelson-Davis
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 9, 2010

Date Mailed: November 24, 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.

MAND/db

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