

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: 2010-34453
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2010
Jackson 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 June 10, 2010, in Jackson. Claimant personally appeared and testified under oath.

The department was represented by Amy Connell (FIM).

By agreement of the parties, the record closed on June 10, 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/retro/SDA applicant (February 16, 2010) who was denied by SHRT (May 20, 2010) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.13 as a guide. Claimant requested retro MA for November, December and January 2009.

(2) Claimant's vocational factors are: age--52; education--high school diploma; post high school education--three semesters at [REDACTED]; work experience--waitress, hostess, home health provider and factory worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2009 when she was a waitress at a local [REDACTED] restaurant.

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

- (a) Bulging discs;
- (b) Herniated discs in her neck;
- (c) Spurs in the neck;
- (d) Arthritis in both hands;
- (e) Arthritis in neck and hands;

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

OBJECTIVE MEDICAL EVIDENCE (May 20, 2010)

A Medical Status dated 3/10 showed claimant had no psychiatric inpatient hospitalizations (page 11). She maintained a spontaneous stream of mental activity throughout her interview. Speech was within normal limits and her responses were well organized. There were no psychotic symptoms (page 9). She was polite and cooperative but seemed somewhat irritable (page 8). Diagnosis was adjustment disorder with depressed mood (page 7).

Claimant reported a history of left knee replacement in 2006, right shoulder surgery in 2002 and right ankle open reduction and internal fixation 15 years ago (page 3). In 3/10, she was 5'5-1/4" and 264 pounds. She had a 1+ pitting edema up to the shin in the left leg. There was evidence of varicose veins in the left leg. The neck revealed a buffalo hump. She had tenderness at C7 but had normal range of motion. There was no tenderness or deformity of the dorsolumbar spine and there was full range of motion. She could make a fist with both hands. Grip strength was equal bilaterally. Ambulation was stable. There was no asymmetry of strength or reflexes. No sensory deficit (page 2). She had significant deconditioning (page 1).

ANALYSIS:

The claimant is obese and has cervical pain. She had no significant neurological abnormalities. Her gait was stable. Grip was equal bilaterally. She does have a history of left knee replacement and shoulder surgery and right ankle fracture. She was depressed but her mental status was unremarkable.

* * *

(6) Claimant lives and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing (loads her dishwasher), light cleaning (slowly), laundry (unable to carry upstairs), grocery shopping (needs help). Claimant does not use a cane, walker, or wheelchair. Claimant uses a shower stool approximately twice a month. She wears braces on her right arm approximately 21 times a month. Claimant was not hospitalized as an inpatient in 2009 or 2010.

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

(8) The following medical records are persuasive:

(a) A March 23, 2010 Internal Medicine consult was reviewed.

* * *

Claimant states she was in relatively good health until she underwent a left knee replacement four years ago after having recurrent meniscal tears and three arthroscopic evaluations. She states her left knee was very painful and it was bone to bone. After the knee replacement, there has been good healing but still some aching in her left knee and it swells recurrently, more so in hot weather.

* * *

Claimant is also concerned with pain in her neck for the last one year which has been getting progressively worse. She states most of the time her pain is at the level of 8 on a scale of 1-10 which is worse with change of weather and she finds it hard to drive her car.

* * *

Since she has not been working, she states the pain in her neck is somewhat better. X-rays of the neck showed evidence of spurs and arthritis. MRI showed bulging and herniated disc in 2009.

* * *

Claimant states she has worked as a waitress for the last 12 years. She has pain in both thumbs, more in the right thumb, started hurting since March 2009. She found it hard to write and felt weakness in her hands. X-rays, again, showed evidence of degenerative arthritis and she was given soft braces which did help her pain.

Claimant states she was never depressed before but now she is because it appears to her that she can hardly do anything for herself. She cannot lift, do scrubbing, dish cleaning, etc.

* * *

The physician provided the following record review/assessment:

(1) Claimant is a 51-year-old female who has cervical pain and her examination is consistent with a diagnosis of cervical spondylosis. She had an x-ray of her cervical spine done on November 6, 2009, which showed minimal spondylitic changes at C4-5 and C5-6.

- (2) She agreed this is the swelling she is concerned about which is clearly related on evaluation due to varicose veins. She needs to elevate her left leg and also wear stockings.
- (3) Claimant has also gained a significant amount of weight of 25 pounds in the last year with an elevated body mass index.
- (4) There is mild pain in the right CMP joint. X-rays show evidence of mild degenerative changes and mild hypertrophic degenerative changes of the interphalangeal joint of the thumb. The remainder of the joints in her right hand are normal.
* * *
- (5) There is a significant amount of deconditioning in [REDACTED].
* * *
- (6) Claimant has had some situational depression for the last year for which Celexa is helping and she is asking for a dose adjustment.

(b) A March 10, 2010 Medical Examination Report (DHS-49) was reviewed. The physician reported the following impairments: neck pain, cervicalgia, arthropathy of thumbs, obesity, depression, hyperlipidemia, and GERD. The physician provided the following work limitations: Claimant is able to lift 10 pounds occasionally. She is able to stand and walk less than two hours in an eight-hour day. She is able to sit about six hours in an eight-hour day. She is not able to do simple grasping, reaching, pushing-pulling or fine manipulating. She is able to operate foot controls normally.

The physician reports no mental limitations.

* * *

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The clinical evidence in the file shows a diagnosis of situational depression.

Claimant did not provide a DHS-49D or DHS-49E to clinically establish an acute 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. The medical records do show that claimant has a history of left knee replacement, right shoulder surgery and right ankle open reduction. The record also shows that claimant is obese, and has pitting edema up through the shin in the left leg. There is evidence of varicose veins in the left leg and a buffalo hump in her neck. Claimant had tenderness at C7, but a normal range of motion. There was no tenderness or deformity in the dorsolumbar spine and there was full range of motion. Claimant could make a fist with both hands. Her grip strength was equal bilaterally. Her ambulation was stable. There was no asymmetry of strength or reflexes and no sensory deficit. Claimant did have significant deconditioning.

(11) Claimant thinks that the medical exams provided by the department are not reliable because the internist had a bias against awarding claimant medical benefits.

(12) Claimant recently applied for federal disability benefits for the Social Security Administration (SSA). Social Security recently denied her claim. Claimant is filing a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P benefits based on the complaints listed in Paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant has a residual functional capacity to perform unskilled light work. The department thinks that claimant's impairments do not meet/equal the intent or severity of the Social Security Administration. The medical evidence of record indicates claimant retains the capacity to perform simple unskilled light work. Based on claimant's vocational profile [individual closely approaching advanced age at 52, with 14 years of education and a history of unskilled and semi-skilled work] department denied MA-P based on Med-Voc Rule 202.13 as a guide. The department denied SDA because the nature and severity of claimant's impairments do not preclude all work activity for at least 90 days.

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).

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 MA-P/SDA purposes. PEM 260/261. "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. Claimant must establish an impairment which is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months from the

date of the application. 20 CFR 416.909. Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Applying 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 most recently worked as a waitress for a [REDACTED] restaurant in [REDACTED]. Claimant's work as a [REDACTED] restaurant was light unskilled work.

The medical-vocational evidence of record shows that claimant has a reduced ability to stand and walk. In addition, claimant has difficulty using her thumbs to perform activities which require a high level of manual dexterity.

Based on the medical evidence of record, claimant is not able to return to her previous work as a waitress because she is unable to do the lifting required in her previous work.

Therefore, claimant meets the Step 4 eligibility test.

STEP #5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. For purposes of this analysis, they classify jobs as sedentary, light, medium, and heavy. These terms are defined in the [REDACTED] published by the [REDACTED]. [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled light and sedentary work. Claimant is also able to perform light and sedentary skilled work because there is no evidence of memory dysfunction in the record.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on her left knee dysfunction, neck dysfunction and arthritis pain.

The medical evidence submitted by the consulting internist does not establish that claimant is totally unable to perform light and sedentary work. Although claimant has cervical pain and varicose veins in the left leg and a buffalo hump, she has normal range of spinal motion. Also, claimant has the ability to walk and there is no asymmetry of strength or reflexes.

While it is true that claimant has significant deconditioning, apparently due to her morbid obesity, this does not preclude her from doing light or sedentary work.

During the hearing, claimant testified that a major impediment to return to work was her neck, left knee and bilateral thumb 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 profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work. Although claimant's pain medications do not totally eliminate her pain, they do provide some relief.

Finally, even though claimant has complaints involving her left knee, right shoulder, and bilateral thumbs, she does have significant residual work capacities. The physician at the Center for Family Health states that claimant is able to lift up to ten pounds occasionally, she can stand/walk approximately two hours in an eight-hour day and is able to sit approximately six

hours in an eight-hour day. Although she has difficulty grasping, reaching, pushing-pulling and fine manipulating, she is able to operate foot controls.

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her neck and left knee pain. Currently, claimant performs many activities of daily living, has an active social life with her mother and grandchildren, who live nearby. The medical evidence of record, taken collectively, shows that claimant is able to perform unskilled sedentary work (SGA) at this time.

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

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, at this time. 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 is, hereby, AFFIRMED.
SO ORDERED.

/S/

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

Date Signed: August 2, 2010

Date Mailed: August 3, 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

cc:

