

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: 2010-41429

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 4, 2010

Monroe 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 August 4, 2010, in Monroe. The claimant personally appeared and testified under oath.

The department was represented by Susan Mustard (FIM).

By agreement of the parties, the record closed on August 4, 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 (March 31, 2010) who was denied by SHRT (July 13, 2010) due to claimant's ability to perform a wide range of light exertional work. SHRT relied on Med-Voc Rule 202.0 as a guide. Claimant requested retro MA for December 2009 and January-February 2010.

(2) Claimant's vocational factors are: age--22; education--11th grade; post high school education--GED; work experience--dishwasher at a wedding hall, elderly care; retail sales at [REDACTED] and [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a dishwasher for a wedding hall in November 2009.

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

- (a) Herniated discs;
- (b) Low back pain;
- (c) Degenerative disc disease; and
- (d) Herniated discs.

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

OBJECTIVE MEDICAL EVIDENCE (July 13, 2010)

Claimant is alleging disability secondary to bulging discs in low back. There is a resonance image, page 29, noting degenerative disc disease L4-S1. There is a Social Security Administration (SSA) examination, page 11, noting difficulty with heel walking, otherwise an examination within normal limit findings. There is a consult, page 13, noting only a mildly antalgic gait.

ANALYSIS:

The evidence supports that claimant would reasonably be limited to performing tasks of a light exertional nature.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning (sometimes), and mopping, vacuuming, grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant hospitalized at [REDACTED], in [REDACTED] for bowel dysfunction.

(7) Claimant has a valid driver's license and drives an automobile about eight times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) An April 10, 2010 Medical Examination Report (DHS-49) was reviewed. The consulting physician listed unspecified physical limitations. However, the physician did not state that claimant was totally unable to perform any work.

(b) A [REDACTED] examination provided the following impression:

(1) Chronic back pain, the possibly of disc disease cannot be totally excluded. The [REDACTED] physician did not specify any physical limitations, and did not state that claimant was totally unable to work.

(c) An [REDACTED] consultation was reviewed.

The [REDACTED] neurosurgeon provided the following summary:

* * *

In summary, I think that claimant is having symptoms that are reflective of her radiologic abnormality. She has not exhausted modalities of conservative management including the use of muscle relaxants and/or the aggressive physical therapy for stretching and strengthening of her back as opposed to her legs. She also has not tried injections. She would like to try all of the above. Should these modalities not work effectively for her, she will call me back to readdress the question of surgical intervention.

The neurosurgeon did not report any specific physical limitations; and she did not suggest that claimant is totally unable to work.

* * *

(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. Claimant does not allege a mental impairment as the basis for her disability.

(10) The probative medical evidence, standing alone, does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has back dysfunction. This would explain claimant's chronic back pain. However, the medical evidence clearly does not establish a severe physical impairment that severely limits claimant's physical capacities.

(11) Claimant thinks she is eligible for MA-P/SDA due to her back dysfunction.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is eligible for MA-P/SDA because her back dysfunction prevents her from returning to her previous work as a dish washer.

DEPARTMENT'S POSITION

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

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 purposes. PEM/BEM 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. 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 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.

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 a Listing.

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 dishwasher for a wedding hall. This was medium work.

The medical/vocational evidence of record shows that claimant has a reduced ability to lift, and also a reduced ability to stand and walk. Based on the medical evidence of record, claimant is not able to return to her previous work as a dishwasher (medium unskilled work).

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, we 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 sedentary work. Claimant is able to perform unskilled sedentary work. This is primarily related to the back dysfunction which was noted by the neurosurgeon at [REDACTED]. There is no evidence of record that claimant has any mental limitations at this time. Based on a careful review of the evidence of record, claimant is able to perform 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 her back dysfunction and 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 back dysfunction, she has no mental impairments, and does have significant residual work capacities. First, she is computer literate. Secondly, there is no evidence that she has limitations in her ability to use her hands and her legs and feet.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her back pain, secondary to her spinal dysfunction. Currently, claimant performs many activities of daily living, has an active social life and drives an automobile approximately eight times a month. The collective evidence 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, based on Step 5 of the sequential evaluation procedure.

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/BEM 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 23, 2010

Date Mailed: August 23, 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:

