

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: 2010-41691
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 12, 2010
Ingham 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 August 12, 2010, in Lansing. Claimant did not appear at the specified time and did not provide any sworn testimony. Claimant was represented at the hearing by [REDACTED], [REDACTED] from [REDACTED]. [REDACTED] stipulated with the department that a decision would be rendered based solely on the medical record.

The department was represented by Jeanne Lugo (Lead Worker)

By agreement of the parties, the record closed on August 12, 2010; no sworn testimony was presented for the record.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for one year (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) Claimant is an MA-P/retro applicant (January 19, 2010) who was denied by SHRT (July 13, 2010) due to claimant's ability to perform sedentary work. Claimant requested retro MA for October 2009.

(2) Claimant's vocational factors are: age--48; education--high school diploma; post high school education--unknown; work experience--history of semi-skilled work.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a.

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

- (a) COPD;
- (b) Chronic bronchitis;
- (c) Hypertension;
- (d) Chronic pain;
- (e) Depression;
- (f) TIAs (x2); and
- (g) Bladder and stress incontinence.
- (h) Unable to sit, stand, or walk more than two hours in an eight-hour day.

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

OBJECTIVE MEDICAL EVIDENCE (July 13, 2010)

Claimant is alleging disability due to leg and feet weakness with burning pain, chronic back pain, shortness of breath and depression. She is 48-years-old and has a 12th grade education with a history of semi-skilled work.

SHRT used the following Listings to evaluate claimant's eligibility: 1.01; 3.01; 12.01.

SHRT denied claimant's MA-P application because claimant is able to perform sedentary work. 20 CFR 416.967(a)

- (6) Claimant performs the following Activities of Daily Living (ADLs) are unknown.

Claimant was hospitalized in October 2009 for COPD, chronic bronchitis, hypertension and depression. Claimant was not hospitalized as an in-patient in 2010.

(7) It is not known whether claimant has a valid driver's license. It is not known whether claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) A [REDACTED] consultative report was reviewed.

The consulting physician provided the following history:

I had the opportunity today of seeing claimant for electrodiagnostic evaluation and consultation. As you know, this is a 47-year-old female who comes in for paresthesias and significant pain in her right lateral thigh. She is very anxious and indicates that anything that touches her lateral thigh causes severe pain. She has a lot of guarding and protecting. She does have some low back pain. She says her left leg works pretty well. She does not have paresthesias in her hands. She has had multiple medications including Tegretol, Zoloft, Trazadone, Tramadol, and Neurontin for these pains. They are currently disabling her. She is applying for Social Security Disability. She has tried Lidoderm patches. She does not have a significant history of drinking. These problems, it is unclear when they came on, but seemed to have gotten worse after a motor vehicle accident in January 2007. She had an MRI of her spine which did not show a clear cut etiology consistent with this. She is able to clearly delineate an area on her lateral thigh above the knee consistent with lateral femoral cutaneous nerve that is dysesthetic.

PHYSICAL EXAM:

She has intact reflexes at both knees and ankles. Her ankles were 2/4 and knees were 2/4. Her strength on the right side, she had a little bit of give away weakness on hip flexors and quadriceps, but otherwise her anterior tib, extensor hallucis longus, and toe flexors were normal. Her straight leg raising was negative. Reverse straight leg raising gave a lot of pain and dysesthesias on the lateral femoral cutaneous. This pain was reproduced with most movements of her leg. She had clear cut allodynia and I hardly had to touch her and just threatened to touch her and she would guard it and protest it and indicates that she had a lot of pain. She had a lot of pain behaviors with regards to rolling over. She had difficulty moving around on the table although she was able to do it. She was very anxious about the test but did an excellent job of tolerating the test. She did have a lot of pain and she did say it was bothering her a bit and it did limit the examination a little bit. Babinski's were downgoing/normal.

IMPRESSIONS:

1. There is no electrodiagnostic (EDX) evidence for:
 - a. Right lumbosacral radiculopathy (L1-S1)
 - b. Generalized polyneuropathy
2. Clinically, I strongly suspect she has meralgia, paraesthetica or lateral femoral cutaneous neuropathy.

NOTE: The Sparrow physician did not report that claimant was totally unable to work.

- (b) A [REDACTED] MRI (lumbar spine) report was reviewed.

The radiologist provided the following impression:

No evidence of herniated nucleus pulposus or spinal stenosis. There is degenerative facet disease in the lower lumbar spine, most prominent at L5-S1, where there appears to be a vertebral anomaly with shortening of the left pedicle. I see no specific etiology for the patient's pain in terms of disk disease or spinal stenosis.

* * *

NOTE: The [REDACTED] did not report any work limitations arising out of the June 22, 2009 MRI exam.

(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. There is no clinical evidence of record to establish a severe mental impairment.

(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 was evaluated by a [REDACTED] [REDACTED] physician on [REDACTED]. He provided the following diagnoses: Meralgia paraesthetica, or lateral femoral cutaneous neuropathy.

Neither the [REDACTED] physician nor the [REDACTED] radiologist reported that claimant had any significant work limitations.

(11) Claimant's status with the Social Security Administration (SSA) is unknown.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's complaints are summarized in the [REDACTED] hearing request as follows:

Claimant was hospitalized at [REDACTED] - [REDACTED] for exacerbation of COPD, chronic bronchitis, hypertension and depression. She has a remarkable history for chronic pain, depression, TIA (x2) (2007), and bladder and stress incontinence. Claimant's treating physician, [REDACTED], has opined that claimant has abnormal gait, decreased ROM on both hips requiring assistive devices to ambulate. He further indicates she is unable to sit, stand, or walk for more than two hours in an eight-hour workday.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform sedentary 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).

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 purposes. PEM/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. 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).

There is no testimony regarding claimant's work history on the record.

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, the claimant must satisfy both the gainful work and duration criteria. 20 CFR 416.920(b).

If claimant does not have an impairment or combination of impairments which profoundly limit her 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 under the *de minimus* rule.

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 work was unskilled semi-skilled work.

The medical/vocational evidence of record shows that claimant has a reduced ability to stand, lift and walk. In addition, on the medical evidence of record, claimant has not established that she is unable to return to her previous work (semi-unskilled work).

Therefore, claimant does not meet the Step 4 eligibility test because she is able to perform sedentary work.

Since the medical evidence of record supports SHRT's determination that claimant is able to perform sedentary work, claimant does not meet the requirements for MA-P at this time based on Step 4 of the sequential analysis.

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 PEM/BEM 260. Claimant is not disabled for MA-P purposes based on Step 4 of the sequential analysis, as described above.

Accordingly, the department's denial of claimant's MA-P application, is hereby,
AFFIRMED.

SO ORDERED.

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

Date Signed: August 24, 2010

Date Mailed: August 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.

2010-41691/JWS

JWS/tg

cc:

