

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: 2010-45358
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 2, 2010
Lapeer 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 September 2, 2010, in Lapeer. The claimant personally appeared and testified under oath.

The department was represented by Michael Hoard (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

By agreement of the parties, the record closed on September 2, 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 19, 2010) who was denied by SHRT (August 9, 2010) due to claimant's ability to perform unskilled/semi-skilled light work. SHRT relied on Med-Voc Rule 202.00. Claimant requested retro MA for November through December 2009 and for January 2010.

(2) Claimant's vocational factors are: age--43; education--high school diploma; post high school education--took coursework to become a certified beautician; work experience--driver for [REDACTED] and beautician.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since [REDACTED] when she worked as a driver for [REDACTED].

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

- (a) Rheumatoid arthritis;
- (b) Unable to sit for long periods;
- (c) Arthritis; and
- (d) Status post back surgery (2006).

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

OBJECTIVE MEDICAL EVIDENCE (August 9, 2010)

MEDICAL SUMMARY:

In 12/09, the claimant was ambulating normal without any limp or assistive device. There was no joint deformity noted as a result of the rheumatoid arthritis. Mild synovial thickening was noted at the MCP joint of the index and middle finger of both hands. However, her grip was full and grip strength was very good. Muscle strength was normal in the upper and lower extremities. Deep tendon reflexes were 2+ bilaterally. She is independent in her self care and activities of daily living. She was working part-time (records from DDS).

In 4/10 the claimant had decreased range of motion of the bilateral hips, right greater than left. Straight leg raise was positive bilaterally, right greater than left. Strength was 4/5 bilaterally due to low back pain. Strength was 4/5 in the left upper extremity due to swelling and pain in the left wrist/hand (page 9).

ANALYSIS:

Claimant has a history of back surgery and back pain. She was more recently diagnosed with rheumatoid arthritis. In 12/09, she had some synovial thickening in the MCP joints of the index and middle finger of both hands. She had full grip strength and gait was normal. In 4/10, she had some decreased range of motion and some decreased strength due to pain.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, cooking (sometimes), dishwashing, grocery shopping (needs help).

Claimant does not use a cane, walker, or wheelchair. She uses a shower stool approximately 14 times a month. Claimant does not wear braces. Claimant was not hospitalized overnight as an in-patient in 2009 or 2010.

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

(8) The following medical records are persuasive:

(a) The September 9, 2010 State Hearing Review Team Decision accurately summarizes claimant's probative medical evidence. See Paragraph #5, above.

(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 disability based on 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 the following diagnoses: Mild synovial thickening of the MCP joint of the index and middle finger of both hands. However, grip was full and grip strength was very good. Claimant also has a diagnosis of decreased range of motion of the bilateral hips, right greater than left. Straight leg raising was positive, bilaterally, right greater than left. Strength was 4/5 bilaterally due to low back pain. The consulting internist did not report that claimant was totally unable to work due to her rheumatoid arthritis.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration (SSA). Claimant alleged the same impairments for her Social Security claim as she has here. Social Security recently denied claimant's SSI application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

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 260/261.

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 Step 1.

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. The durational requirement for SDA is 90 days.

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 her physical or mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c). SHRT decided claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets Step 2.

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 Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a driver for [REDACTED]. This work was light work. The vocational evidence of record shows that claimant has rheumatoid arthritis and synovial thickening in the MCP joint of her fingers.

Claimant's rheumatoid arthritis does not prevent her from returning to her previous work as a driver for [REDACTED].

Therefore, claimant does not meet Step 4.

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. This means that claimant is able to work as a ticket taker for a theater, as a parking lot attendant, as a janitor, or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to her return to work was her body pain secondary to rheumatoid arthritis, especially in her back. 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. Although claimant's pain medications do not totally eliminate her pain, they do provide some relief.

It should be remembered that even though claimant has several significant physical impairments, she does have demonstrable residual work activities. She is able to do several activities of daily living, and drive an automobile. In addition, she is computer literate.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her rheumatoid arthritis and back pain.

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/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: October 22, 2010

Date Mailed: October 22, 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:

