

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-54177

Issue No: 2009; 4031

Case No: [REDACTED]

Hearing Date:

November 1, 2010

Otsego 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 November 1, 2010, in Gaylord. The claimant personally appeared and testified under oath.

The department was represented by Dale Terryberry (FIM) and Carrie Hartfield (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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/SDA applicant (July 10, 2010) who was denied by SHRT (September 24, 2010) due to claimant's ability to perform unskilled/semi-skilled light work. SHRT relied on Med-Voc Rule 201.21 as a guide.
- (2) Claimant's vocational factors are: age--47; education—9th; post high school education--GED; work experience—packer at a printing company, gas station cashier.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when she worked as a packer for a printing company.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Scoliosis;
 - (b) Neck dysfunction with pain;
 - (c) Spine dysfunction with pain; and
 - (d) Depression.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (September 24, 2010)

MEDICAL SUMMARY:

An MRI of the cervical spine showed severe scoliosis. (Page 3.) The thoracic MRI showed mild degenerative changes (Page 4). On 4/2010, claimant had pain with hip and spine movements. She had limited range of motion of the shoulder. Neurologically, she had poor balance. (Pages 19-21.)

ANALYSIS:

The objective medical evidence does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of sedentary work.

* * *

- (6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, cooking, laundry (sometimes), and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2009 or 2010.

(7) Claimant has a valid driver's license and drives an automobile approximately eight times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] [REDACTED] physician provided the following report:

Claimant is a patient who recently re-established with need for long-standing history of neck pain and worsening arm weakness. She has recently had an MRI imaging, which shows severe scoliotic changes in her cervical spine in all levels, but primarily between T3 through C6. This does put pressure on her cervical cord that could potentially cause her to become a quadriplegic. She also has multiple levels of narrowing of the openings where the nerves exit and this is causing the arm weakness that she has been complaining about. That is, she has multiple pinched nerves in her neck.

In summary, claimant has severe scoliotic and degenerative cervical spine pain that has caused her progressive weakness, and more likely requires surgical intervention to prevent further damage to her nerves and spinal cord. Currently, she is disabled. The weakness that this has caused has progressed to the point that she is unable to complete a normal workday or work week.

* * *

(b) A May 13, 2010 Medical Examination Report (DHS-49) prepared by a physiatrist which was reviewed.

The physiatrist provided the following current diagnoses: lumbar radiculopathy and carpal tunnel syndrome.

The physiatrist states that claimant has pain with hip and spine movements. Claimant cannot abduct past 90 degrees at either shoulder. Claimant has poor balance and poor reflexes. The physician states that claimant can lift ten pounds occasionally. She can

stand or walk less than two hours in an eight-hour day and sit less than six hours in an eight-hour day. The physician states that claimant is totally unable to perform repetitive work.

NOTE: The physiatrist who examined claimant on July 16 and May 13, 2010 states that claimant is currently disabled due to severe scoliotic and degenerative cervical spine that causes progressive weakness and will likely require surgical intervention.

- (9) Claimant does not allege a severe mental impairment as the basis for her disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.
- (10) The probative medical evidence does establish an acute (exertional) physical impairment, or combination of impairments expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's physiatrist states the following:

In summary, claimant has severe scoliotic and degenerative cervical spine that has caused her progressive weakness, and will likely require surgical intervention to prevent further damage to her nerves and spinal cord.

Currently, she is disabled. The weakness that this has caused has progressed to the point that she is unable to complete a normal workday or work week.

* * *

Based on the evidence invented by claimant's physiatrist, she is totally unable to perform all work activities.

- (11) Claimant recently applied for federal disability benefits (RSDI/SSI) with the Social Security Administration. Her application is currently pending.

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).

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not

have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...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).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(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).

...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).

...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).

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. 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. Claimants who are working, or otherwise performing Substantial Gainful Activity (SGA), are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The 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. Claimant must establish an impairment which is expected to result in death, has existed for 12 months and/or totally prevents all current work activities. 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).

Using the *de minimus* standard, 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 the Listings.

However, SHRT evaluated claimant's eligibility using applicable Listings. SHRT decided that claimant does not meet any of the applicable SSI Listings.

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's last employment was working as a packer for a printing company. This was medium work. Because of claimant's scoliosis and degenerative cervical spine condition, she is unable to return to that work. Claimant is unable to do the constant standing, bending and lifting required of her previous job as a packer for a printing company.

Therefore, claimant meets Step 4.

STEP #5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work.

Claimant has the burden of proof to show by the medical/psychiatric evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

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

Second, claimant alleges disability based her severe scoliotic and degenerative cervical spine which causes progressive weakness. This was documented by her physiatrist, in his report dated July 16, 2010.

The physiatrist stated quite succinctly that claimant is disabled based on her current spinal dysfunction.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is not able to perform unskilled sedentary work (SGA).

The Administrative Law Judge finds that the reports presented by claimant's physiatrist, Dr. Gast, M.D., dated July 16 and May 13, 2010 is credible and persuasive evidence that claimant meets the MA-P/SDA disability standards.

In summary, the Administrative Law Judge is persuaded that claimant is totally unable to work based on the reports submitted by her physiatrist. Also, it is significant that the physiatrist issued an "off work" letter dated July 16, 2010.

The department has not established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it denied claimant's MA-P/SDA application. Furthermore, claimant, based primarily on the reports of her physiatrist, did meet her burden of proof to show that the department's denial of her MA-P/SDA application was reversible error.

Based on this analysis, the department incorrectly 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 meets the MA-P/SDA disability requirements under BEM 260/261. Claimant is disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis, as described above. Therefore, the department's denial of claimant's MA-P/SDA application is, hereby, REVERSED.

The department shall review claimant's ongoing eligibility for MA-P/SDA in July 2012.

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 8, 2011

Date Mailed: July 11, 2011

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:

