

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-55446

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 10, 2010

Roscommon 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 10, 2010, in Roscommon. The claimant personally appeared and testified under oath. The claimant was represented by [REDACTED].

The department was represented by Michelle Morley (ES).

The Administrative Law Judge appeared by telephone from Lansing.

By the agreement of the parties, the record closed on November 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/SDA applicant (June 30, 2010) who was denied by SHRT (October 5, 2010) due to claimant's ability to perform a wide range of sedentary work. SHRT relied on Med-Voc Rule 201.20 as a guide.
- (2) Claimant's vocational factors are: age--49; education--9th Grade; post high school education--none; work experience--wiring technician at a machinery remanufacturing company, owner/operator of a pet store.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a wiring technician at a company which remanufactures screw machines.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Unable to bend, stand, kneel, or lift objects without experiencing great pain;
 - (b) Generalized pain in neck, back, arms and feet.
 - (c) Numbness in feet;
 - (d) Pinched nerve;
 - (e) Herniated discs;
 - (f) Fibromyalgia; and
 - (g) Cramping in feet.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (10/05/2010)

Claimant is 49 years old, has a less than high school education, and a history of medium, skilled employment. Claimant is alleging disability secondary to degenerative disc disease, neuropathy, fibromyalgia, left shoulder and arm pain, bilateral foot pain and generalized pain. The Medical Review Team denied MA-P, retro MA-P, and SDA on July 14, 2010.

MEDICAL SUMMARY:

The treating source note states that claimant is able to lift up to 10 pounds frequently with no other limitations (page 75).

A recent electromyogram notes left C7 radiculopathy and some right sensory delay at risk (page 5).

An MRI report, page 19, shows cervical and lumbar degeneration.

ANALYSIS:

The objective medical evidence supports the findings of MRT.

* * *

- (6) Claimant performs the following Activities of Daily Living (ADLs) with pain: dressing, bathing, cooking, dishwashing (sometimes), light cleaning, mopping (sometimes), vacuuming (sometimes), laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant was not hospitalized overnight as an inpatient in 2009 or 2010.
- (7) Claimant has a valid driver's license and drives an automobile approximately five times a month. Claimant is not computer literate.
- (8) The following medical records are persuasive:
 - (a) An April 7, 2010 Medical Examination Report (DHS-49) was evaluated.

The treating physician provided the following information:

Current diagnoses: Hypertension (benign); alcohol abuse--continuous; joint pain unspecified; fatigue and malaise; alcoholism NOS; degenerative disc disease/lumbar; cervical disc degeneration; family history of cardiovascular disease; allergies.
 - (b) The treating physician reported that claimant is able to lift up to ten pounds frequently with no other limitations reported.

NOTE: The treating physician did not report that claimant was 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 (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period. The medical records do show the following diagnoses: Hypertension, alcohol

abuse, joint pain, fatigue in the legs, alcoholism, disc disease, cervical disc degeneration, family history of cardiovascular disease and allergies. The treating physician did not report that claimant was totally unable to work.

- (11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. The impairments alleged on claimant's Social Security application are approximately the same as those alleged here. SSA recently denied her claim. 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.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the 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.

However, SHRT did evaluate claimant's impairments using SSI Listings 12.02/.03/.04 and 11.14. After reviewing the Listings, SHRT decided claimant does not meet any of the 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 previous work was working a wiring technician at a machine remanufacturing facility. This is semi-skilled sedentary work.

The medical evidence of record shows that claimant has difficulty lifting heavy objects and has difficulty standing for long periods of time, including an eight-hour shift.

Based on the medical evidence of record, claimant is not able to return to her previous work as a wiring technician at a machine remanufacturing facility.

Claimant meets 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] 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. Notwithstanding claimant's moderate spinal dysfunction in combination with pain, claimant is able to do simple, unskilled sedentary work. This includes working as a ticket taker for a theater, as a parking lot attendant, as a light janitor, and as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to her return to work was her neck, back, leg and foot pain secondary to her spinal dysfunction. 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 and profound, 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 limited relief.

It should be remembered that even though claimant has several significant physical impairments, she does retain demonstrable residual work capabilities. Claimant's treating physician did not report that claimant was totally unable to work. In addition, she performs an extensive list of activities of daily living, although she frequently must stop what she is doing for a brief rest period.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments, and particularly her spinal dysfunction and concomitant pain. Claimant currently performs many activities of daily living, has an active social life with her daughter and grandson, and drives an automobile approximately five times a month.

Based on this analysis, considering the entire record, 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: December 8, 2010

Date Mailed: December 8, 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:

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