

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. Nos: 2009-26366
2010-30217
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date: September 9, 2009
and May 12, 2010
Ionia 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 September 9, 2009 in Ionia. Claimant personally appeared and testified under oath. Claimant was represented by D. Scott Stewart (P-33352) from Legal Services of Western Michigan.

The department was represented by Steve Speiser (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was submitted to the State Hearing Review Team (SHRT) on March 26, 2010. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

Claimant filed two hearing requests on the denial of her MA-P and SDA applications. The issues raised are very similar and this Hearing Decision applies to both of claimant's applications.

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/SDA applicant (February 2, 2009 and May 15, 2009) who was denied by SHRT (July 2, 2009 and April 20, 2010) based on claimant's ability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.21 as a guide. Claimant requests retro MA-P for November, December 2008 and January 2009.

(2) Claimant's vocational factors are: age—47; education—high school diploma, post-high school education—six semesters at Montcalm Community College (General Studies Major); work experience—long haul truck driver, stocker for Meijer's, homemaker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2008, when she was employed by a long haul truck driver.

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

- (a) Arthritis;
- (b) Scleroderma;
- (c) Requires supplemental oxygen 24/7;
- (d) COPD;

- (e) Asthma;
- (f) Severe depression;
- (g) Sleep apnea.

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

OBJECTIVE MEDICAL EVIDENCE (JULY 2, 2009)

The physical examination stated claimant's chest sounds were normal. She weighs 197 pounds with a height of 61.75 inches (Page 11). Her chest x-rays are normal (page 26); pulmonary function studies done in 5/2008 were within normal limits. (Pages 73-74). She has a history of sleep apnea that's successfully being treated with a C-PAP machine.

Mental: The mental examination reported claimant is grieving the recent death of a family member. Her affect is depressed. Her thoughts and feelings are appropriate. Her judgment and memory were good. (Pages 1-9).

ANALYSIS:

The objective medical evidence presented 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 simple, light unskilled work.

* * *

(6) Claimant lives with her aunt and performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, cooking (sometimes), dishwashing (sometimes), light cleaning (sometimes), vacuuming (sometimes), laundry (sometimes), grocery shopping (needs help). Claimant uses a cane approximately 15 times a month. She does not use a walker, a wheelchair, or a shower stool. She wears braces on both her hands approximately 20 times a month. Claimant was hospitalized for inpatient treatment of her pneumonia and congestive heart symptoms in 2008. Claimant was not hospitalized in 2009.

(7) Claimant has a valid CDL (chauffeur's license) and drives an automobile approximately 3 times a month. Claimant is computer literate.

(8) The following medical/psychological records are persuasive:

- (a) A May 7, 2009 Community Mental Health Assessment was reviewed.

The Master Social Worker provided the following DSM diagnosis: Axis I—Major depressive disorder, single episode; Axis V/GAF—45.

The Social Worker provided the following background:

Clinical justification for diagnosis: Major depressive disorder: Client is tearful, reported suicidal ideation without a plan, reported hopeless feelings, depressed feelings, and grief and loss issues. Reported she has not had not had these feelings before this year, client has multiple stressors, she denies anxiety.

Interpretive Summary: This is a woman who has had several severe events happen in the past year that she has not been able to recover emotionally from: the loss of her health and her job, and now her marriage. Her nephew killed himself in January this year and she is living with her aunt and uncle with no benefits, trying to get help, but has been turned down by DHS for Medicaid and can't afford the medications she needs, and the doctor she needs to see to get better. She recently applied for Social Security. Recommendation for treatment is individual therapy and work with either a nurse advocate or a peer advocate to navigate the system. She stated she will continue to get her anti-depressant from her primary.

* * *

- (b) An August 9, 2008 University of Michigan (Department of Internal Medicine/Division of Rheumatology) narrative report was reviewed.

The internist provided the following background:

* * *

As you well know, she is a 46 year-old woman who in early 2008 developed evidence for pulmonary disease and pneumonia. This is associated with hospitalization at California and subsequent work-up here in Michigan. She had evidence for some hilaradenopathy, as well as changes consistent with Chronic Obstructive Pulmonary Disease. It

is not clear if there was any biopsy. In addition, over the last several months, she has developed a fused inflammatory arthritis involving the small joints of the hands, wrists, ankles and feet bilaterally. This has been associated with greater than 2 hours of morning stiffness daily. She has had progressive decline in her ability to perform her activities of daily living from this inflammatory arthritis. She continues with significant Chronic Obstructive Pulmonary Disease and requiring the use of inhaled oxygen on a daily basis. Apparently, the evaluation for coexisting cardiac disease was unrevealing. She continues with significant pulmonary limitations as well as musculoskeletal limitations.

* * *

The consulting internist provided the following impression:

My impression is that claimant's clinical signs and symptoms, laboratory studies, and x-rays are consistent with a diagnosis of rheumatoid arthritis. I am somewhat concerned regarding the nature of her underlying pulmonary disease, however. As her anti-scleroderma CL-70 antibodies were also positive suggesting a possibility of an overlapped syndrome.

* * *

NOTE: The consulting U of M internist did not state that claimant was totally unable to work.

- (c) A February 23 Medical Examination Report (DHS-49) was reviewed. The family physician provided the following diagnoses: Shortness of breath with COPD; oxygen dependent 24/7; depression.

The family practitioner states that claimant's condition is improving. The physician reports the following physical limitations: claimant is able to lift up to 10 pounds frequently and 20 pounds occasionally. She is able to stand/walk less than 2 hours in an 8 hour day. She is able to sit 6 hours in an 8 hour day. Claimant requires external oxygen 24/7. Claimant has normal use of her hands/arms and feet/legs.

The family practitioner reported no mental limitations.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she has been diagnosed with major depressive disorder, single episode. The Community Health Master's Social Worker provided an Axis V/GAF diagnosis of 45 in May 2009. The Master's Social Work CMH provider did not state that claimant was totally unable to work. Claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant reported the following impairments: Arthritis, Scleroderma, requires supplemental oxygen 24/7, COPD, asthma and sleep apnea. However, at this time, the medical records do not establish a severe functional limitation arising out of claimant's physical impairments.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied her application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department thinks the medical evidence of record shows claimant retains the capacity to perform simple, unskilled light work.

Based on claimant's vocational profile [younger individual (age 46), with a high school education and a history of semi-skilled work], the department denied MA-P based on Med-Voc Rule 202.21 as a guide.

The department denied SDA benefits because the nature and severity of claimant's impairments do not preclude all unskilled light work activity for at least 90 days.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is

reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

The department decides eligibility based on mental impairments using the following standards.

(a) **Activities of Daily Living.**

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) **Social Functioning.**

...**Social functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, histories of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) **Concentration, Persistence or Pace**

...**Concentration, persistence or pace** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

A statement from a Medical Source finding that an individual is “disable” or “unable to work” does not mean that disability exists for the purposes of the MA-P/SDA programs.

20 CFR 416.927(e).

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 260/261.

“Disability,” as defined by MA-P/SDA standards is a legal term which is individually determined by a 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 is 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 medical/vocational evidence of record shows claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability 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 existed to result in death, it must have lasted or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, 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 that profoundly limit her physical/mental ability to do basic work activities, she does not meet the Step 2 criteria. However, under the *de minimus* rule, claimant meets the severity and duration requirements and Step 2 criteria.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

SHRT evaluated claimant's eligibility based on the SSI Listings and decided that claimant does not meet any of the applicable SSI Listings.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a long haul truck driver. This would require claimant to sit continuously for an 8 hour shift. Claimant must also be able to lift packages weighing more than 20 pounds.

Because claimant is unable to sit for a continuous 8 hour shift as a truck driver, and is unable to lift the required 20 pounds, she is unable to return to her previous job as a long haul truck driver.

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 mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on severe depression. The psychological evidence provided by the Master Social Worker establishes a diagnosis of severe depression, one episode. Furthermore, the Master Social Worker provided an Axis V/GAF score 45. The psychological evidence provided by the limited license social worker does not show that claimant is totally unable to perform any work activities. Furthermore, claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments: arthritis, scleroderma, the need for oxygen 24/7, COPD, asthma and sleep apnea. The probative medical evidence in the record does not show that claimant's physical impairments severely limit her ability to the degree that she is totally precluded from all substantial gainful activity.

Third, claimant testified that she is unable to work due to her arthritic pain in her back, hands, knees and feet. 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 profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In addition, claimant's family physician states that her physical conditions are improving.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Claimant currently performs many Activities of

Daily Living, has an active social life with her aunt and uncle and drives an automobile approximately 3 times a month. In addition, claimant is computer literate.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary work (SGA). In this capacity, she is physically able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for Wal-Mart.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application, based on Step 5 of the sequential analysis, as presented above.

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 260/261.

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: November 19, 2010

Date Mailed: November 22, 2010

JWS/sd/tg

cc:

