

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-2901

Issue No: 2009

Case No: [REDACTED]

Load No:

Hearing Date:

December 17, 2009

Gratiot 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 December 17, 2009, in Ithaca. The claimant personally appeared and testified under oath.

The department was represented by Lee Hale (FIM).

By the agreement of the parties, the record closed on December 23, 2009.

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on December 22, 2009. 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.

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 (April 2, 2009) who was denied by SHRT (October 28, 2009 and January 4, 2010). SHRT relied on Med-Voc Rule 203.21 as a guide. Claimant requested retro MA for January, February and March 2009.
- (2) Claimant's vocational factors are: age--50; education—high school diploma; post high school education--none; work experience—nurse aide for a long-term care center.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 1968 when she was employed as a nurse aide in a long-term care center.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Attempted suicide (April);
 - (b) Stroke; and
 - (c) Heart dysfunction.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (October 28, 2009)

MEDICAL SUMMARY:

The claimant had a normal MRI of the brain in 1/2009 (page 47). An echocardiogram dated 1/2009 showed normal ejection fraction and mild tricuspid regurgitation, otherwise, normal study (pages 48-49).

In 3/2009, claimant was noted to have significant improvement in her right-sided weakness. She had no gait difficulty. Overall, she was doing well. Motor strength and tone were normal (page 27).

In 6/2009, she was doing well with no new neurological symptoms. Gait was normal. Strength and tone were normal and reflexes were symmetrical (page 26).

In 7/2009, claimant's examination was basically unremarkable (page 5).

ANALYSIS:

The claimant had a possible TIA. Her most recent examinations have been basically unremarkable.

RECOMMENDATION:

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

The medical evidence of record indicates that claimant retains the capacity to perform a wide range of medium work. Claimant reported no relevant work history.

Therefore, based on the claimant's vocational profile (closely approaching advanced age at 50, high school education and no relevant work history reported), MA-P is denied using Vocational Rule 203.21 as a guide. Retroactive MA-P was considered in this case and is also denied.

SDA is denied per PEM 261, because the nature and severity of the claimant's impairments would not preclude work activity at the above-stated level for 90 days.

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping.
- (7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.
- (8) 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 alleged disability based partially on a mental impairment. However, claimant did not submit any clinical evidence from a psychiatrist or psychologist to support her allegation of a mental impairment.
- (9) 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 of time. Claimant was evaluated by the [REDACTED] of the [REDACTED] on [REDACTED]. The cardiologist reported that claimant's left ventricle, right ventricle, atria, mitral valve, tricuspid valve, plumonic valve, weight vessels, pericardium/pleural function, Doppler flow were all normal. Claimant's aortic valve was diagnosed as

problematic, but does not amount to a disabling condition. The [REDACTED] of [REDACTED] provided the following summary:

- (1) Normal left ventricular systolic function with an ejection fraction of 55% to 60% with no segmental wall motion abnormalities and with normal chamber sizes.
 - (2) Mild tricuspid regurgitation with normal pulmonary artery pressure by Doppler, otherwise normal study. The information provided by [REDACTED] does not show that claimant is totally unable to work.
- (10) There is no information on claimant's efforts to obtain SSI from the Social Security Administration.

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).

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. 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.

The Medical-Vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets 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 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. BEM 260.

Also, to qualify for MA-P, 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. BEM 260. SHRT decided that claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets the Step 2 disability test.

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. Furthermore, SHRT evaluated claimant's eligibility under the Listings and concluded that claimant was not eligible on this basis. The SHRT decision with respect to claimant's listing eligibility is adopted herein.

Therefore, claimant does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a nurse aide in a long-term care center.

The Medical/Vocational evidence of record shows that claimant does have a history of a possible TIA and a history of stroke and heart trouble. The medical evidence also shows that claimant's recent cardiac examinations have been basically unremarkable. The physicians and cardiologists, who have examined claimant, have not stated that claimant is totally unable to work. However, based on claimant's history of heart dysfunction, she is unable to return to her previous work as a nurse aide in a long-term care facility because she is unable to stand continuously for an eight-hour shift and lift heavy objects (patients) repeatedly.

Therefore, claimant meets the Step 4 disability test.

STEP #5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. 20 CFR 416.920(f). BEM 260. 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, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Notwithstanding claimant's heart dysfunction, claimant is able to work as a ticket taker for a theater, as a parking lot attendant, as a light duty janitor for a school, or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to her return to work was a general reduction in her overall stamina and her ability to lift heavy objects. Unfortunately, the evidence provided by claimant in this regard is insufficient to establish disability for MA-P purposes.

The Administrative Law Judge concludes that claimant's testimony about her heart dysfunction 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 heart dysfunction is a significant impairment, the medical records show that she has responded favorably to the medical services of her physicians.

It should be remembered that even though claimant has significant heart dysfunction, she does have demonstrable residual work capacities. She is able to perform many activities of daily living (dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry, and grocery shopping).

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. In addition, also it is significant that there is no off work order from claimant's primary care physician in the record.

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

Based on this analysis, the department correctly denied claimant's MA-P 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 disability requirements under PEM 260. Claimant is not disabled for MA-P purposes based on Step 5 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 10, 2011

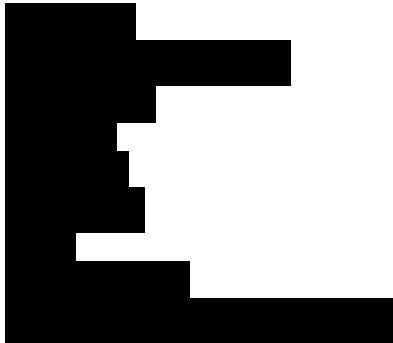
Date Mailed: June 10, 2011

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:

A large black rectangular redaction box covering several lines of text in the distribution list.