

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.: 2010-36181
Issue No.: 2009; 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 28, 2010
DHS County: Macomb (36)

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 in Sterling Heights on September 28, 2010. Claimant personally appeared and testified under oath.

The department was represented by Colleen Williams (ES).

By agreement of the parties, the record closed on September 28, 2010.

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 (February 2, 2010) who was denied by SHRT (June 4, 2010) due to claimant's ability to perform her past work as a cleaner.

2. Claimant's vocational factors are: age – 57; education – 8th grade ([REDACTED]); post high-school education – none; work experience -- claimant testified she has not worked outside the home since she moved to the [REDACTED]. An [REDACTED]-[REDACTED] (date unknown) reports that claimant worked as a building cleaner from 1995 through 1998 and for a uniform company [REDACTED] from [REDACTED]. She also worked for [REDACTED] as a cleaner from [REDACTED].
3. Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a building cleaner for [REDACTED].
4. Claimant has the following unable-to-work complaints:
 - a. Status post liver cyst surgery;
 - b. Status post surgical infection;
 - c. Difficult breathing;
 - d. Back pain;
 - e. Dizziness;
 - f. Unable to stand more than 15-16 minutes;
5. SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (JUNE 4, 2010)

SHRT decided that the claimant was able to perform her past work as a cleaner. SHRT decided that claimant does not meet any of the applicable listings.

6. Claimant performed the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing. Claimant does not use a cane, walker, wheelchair, or shower stool. She does not wear braces. Claimant was hospitalized in 2009 due to a surgical infection. She was hospitalized in 2010 for headaches.
7. Claimant does not have a valid driver's license and does not drive. Claimant is not computer literate.
8. The following medical records are persuasive:
 - (a) A [REDACTED] report was reviewed. The physician provided the following:

HISTORY OF PRESENT ILLNESS:

Fifty-six-year old female-diabetic who on July 1 underwent an incision of an echinococcal liver cyst, being treated with

Albendazole since that time had been feeling well post operatively, until two days ago when she developed an upper right quadrant abdominal pain along with fevers, chills, and nausea. She has felt generally weak. She does not feel short of breath, although she states that because of pain she is having some splinting type breathing.

She has been evaluated by infectious disease given a dose of Vancomycin and also started on Zosyn. At the time of my interview, patient has had some improvement in her pain with administration of morphine, although not resolution; still rates pain approximate six out of ten.

SOCIAL HISTORY:

Patient smokes approximately a pack of cigarettes every three days. Denies alcohol or illicit drugs. Patient is married. Immigrated from Yugoslavia approximately five years ago, and works in a uniform factory.

IMPRESSION AND PLAN:

(1) Likely post operative abscess status post CT-guided drainage with cultures ran positive for cocci.

(2) History of echinococcal liver cyst status post excision.

Note: The physician did not indicate the number of days claimant would need to recuperate from her surgical infection.

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 a 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 that claimant had a cyst removed from her liver in July 2009. She also had surgical complications due to an infection. The medical evidence of record does not establish that claimant's liver surgery totally prevents her from all employment for the required period of time.
11. Claimant recently applied for Federal disability benefits (SSI) from the Social Security Administration (SSA). 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 (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) 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 a 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. PEM/BEM 260/261.

Claimants who are working and performing 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, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a)(3).

If claimant does not have an impairment or a 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 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 building cleaner. This was light work.

The medical/vocational evidence in the record shows that claimant has a reduced ability to lift, stand and walk due to liver surgery (2009) and a subsequent surgical infection. However, the medical records suggest that claimant will eventually recover from the incision of her liver cyst surgery and will be able to return to work after a suitable period for recuperation.

Since claimant will be able to return to work after she recuperates from her July 2009 surgery, she 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] 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 includes working as a ticket taker for a theater, as a parking lot attendant, as a janitor, or as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to her return to work was back pain. 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, though 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 claimant is able to perform significant work activities including dressing, bathing, cooking and dishwashing.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her status post liver cyst surgery and the resulting surgical infection. Claimant currently performs several activities of daily living and has an active social life with her husband and goes to appointments with her medical doctors. The collective evidence shows that claimant is able to perform unskilled sedentary work (SGA).

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.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed October 24, 2010

Date Mailed: October 25, 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 mailing 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/pf

cc:

