

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. No: 2010-38965  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 20, 2010  
Calhoun 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 July 20, 2010, in Battle Creek. The claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Toni Cruise (AP Supervisor) and Hal Means (ES).

The agreement of the parties, the record closed on July 20, 2010.

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 (February 10, 2010) who was denied by SHRT (June 24, 2010) due to claimant's ability to do light unskilled work. SHRT relied on Med-Voc Rule 202.20. Claimant requested retro MA for November and December 2009 and January 2010.

(2) Claimant's vocational factors are: age--46; education--11th; post high school education--none; work experience--housekeeping and factory work.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked in a factory in 2003.

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

- (a) Blurred and double vision;
- (b) Chronic headaches;
- (c) Face numbness;
- (d) Head pain;
- (e) Daily dizziness spells;
- (f) Poor memory;
- (g) Status post aneurysm repair (November 2009);
- (h) Depression;
- (i) Anxiety;
- (j) Tinnitus;
- (k) Inability to concentrate due to headaches and tinnitus.

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

**OBJECTIVE MEDICAL EVIDENCE (June 24, 2010)**

SHRT decided that claimant was able to perform light unskilled work. SHRT evaluated claimant's impairments using SSI Listings 1.01 and 11.01. SHRT decided claimant did not meet any of the applicable listings. SHRT denied disability based on 20 CFR 416.967(b) and 20 CFR 416.968(a), due to claimant's ability to do light unskilled work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), dishes, light cleaning, laundry (sometimes), and grocery shopping (needs help). Claimant uses a cane on a daily basis; she does not use a walker or wheelchair. Claimant was hospitalized in November 2009 for brain surgery.

(7) Claimant has a valid driver's license; she drove an automobile once in the last 30 days but she became disoriented and asked her mother to take over the wheel. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A June 22, 2010 Adult Mental Status Exam (Ph.D.) was considered.

The Ph.D. psychologist stated under History of Illness complaints and symptoms:

Claimant had an aneurysm repair November 2009.

Claimant stated it began when, 'I felt something pop inside my head and it burnt.' Current symptoms are vertigo, 'I stay dizzy all the time,' watery eyes, blurred and double vision in her left eye, headaches and numbness in her face, and tinnitus. She stated she constantly hears bells in her head. Claimant stated she must ambulate with a cane to help steady herself.

Since the aneurysm, claimant has experienced depressive symptoms. She has crying spells, is anxious, and has problems. She does not have any current suicidal intent, but said, 'Sometimes, I wish, I be tired, just the noise inside my head, they are very loud.'

**PERSONAL HISTORY:**

Medical history: Claimant has the metal flakes in her hands which cause her some discomfort, but has full grip strength and dexterity. **She has after affects from the aneurysm repair consisting of constant bell ringing in her ears, blurred and double vision and dizziness.**

**SOCIAL FUNCTIONING:**

Claimant related cordially with staff, but was clearly in distress.

**STREAM OF MENTAL ACTIVITY**

Claimant's thoughts were disorganized and she was clearly distracted by the tinnitus. Speech was clear and understandable.

**EMOTIONAL REACTION**

Claimant wept constantly during the interview.

**SENSORIUM AND MENTAL CAPACITY:**

**ORIENTATION:**

**At this point, the rest of the mental status examination was stopped due to her agitation and difficulty.**

**DIAGNOSES:**

Axis I: Adjustment disorder with mixed anxiety and depressed mood; cognitive disorder not otherwise specified.

Axis V: GAF 48

**PROGNOSIS:**

Claimant had significant difficulty with immediate and recent memory. Much of her difficulty is the constant tinnitus that has occurred since her aneurysm.

\* \* \*

Claimant continues to have blurriness and double vision in one eye and numbness in her skin and face.

\* \* \*

(9) The probative medical evidence does establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time.

The Ph.D. psychologist reported a diagnosis of adjustment disorder and cognitive disorder with a current GAF of 48. Most importantly however, claimant was unable to complete the mental status examination at the Ph.D. psychologist's office because she became agitated and disoriented and was unable to cope with the questions asked by the psychologist.

(10) The probative medical evidence, standing alone, does establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions. The medical records show that claimant has an unsteady gait, constant headaches, and blurry eyes. Claimant had brain surgery (endovascular treatment) of her left internal carotid artery. She also has a diagnosis of left-third nerve palsy.

(11) Claimant thinks she is eligible for MA-P because she is unstable on her feet due to constant dizziness, is unable to concentrate due to ringing in her ears and becomes disoriented when driving. In addition, she has regular mental lapses where she cannot remember basic information about herself.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration (SSA). Her application is currently pending.

## CONCLUSIONS OF LAW

### **CLAIMANT'S POSITION**

Claimant's position is that she is totally unable to work due to a combination of her mental and physical impairments. Claimant has difficulty concentrating and difficulty recalling basic information about herself. Her memory is clearly impaired. Claimant's mental

impairments are coupled with her physical impairments which include status post brain surgery with recurrent sequelae including unstable gait, tinnitus, and blurred vision.

### **DEPARTMENT'S POSITION**

The department thinks that claimant has the residual functional capacity to perform unskilled light work. The department thinks that claimant's impairments do not meet/equal the intent or severity of the Social Security listings.

### **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 does 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).

**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. PEM 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.

SGA is defined as the performance of significant duties over a reasonable period of time for pay.

Claimants, who are working or 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.

Claimant meets the Step 1 eligibility test.

### **STEP #2**

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Unless an impairment which is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months from the date of application. 20 CFR 416.909.

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. 20 CFR 416.920(c).

Claimant meets the Step 2 eligibility 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 the Listings.

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

**STEP #4**

The issue at Step 4 is whether claimant is able to do previous work. Claimant last worked as a laborer in a local factory. She was performing light unskilled work.

The medical/vocational evidence shows that claimant has almost no ability to perform factory work where she is required to stand constantly for an eight-hour shift and follow directions with respect to her work activities. Based on the medical evidence of record, claimant's combination of impairments prevent her from returning to her previous work.

The claimant meets the Step 4 eligibility test.

**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]. [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is not able to perform any gainful work. Her mental impairments prevent her from following directions and concentrating on a given task for an eight-hour shift. Her physical impairments (blurred vision, constant headaches and inability to concentrate) prevent her from performing the physical limitations required of normal work activities.

In short, the Administrative Law Judge is persuaded that claimant is totally unable to work based on her combination of mental and physical impairments. Claimant is unable to focus and unable to maintain concentration for an eight-hour shift. Also, she is unable to walk and stand on her feet without the use of a cane for an eight-hour shift.

Based on this analysis, the department incorrectly 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 meets the MA-P disability requirements under PEM 260. Claimant is 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,  
REVERSED.

The department will conduct a complete eligibility review, including a new physical and mental evaluation, 12 months from the date of this Order.

SO ORDERED.

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

Date Signed: August 2, 2010

Date Mailed: August 3, 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

2009-28331/JWS

cc:

