

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: 2010-39925
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 28, 2010
Kalamazoo 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 28, 2010, in Kalamazoo. Claimant did not appear at the specified time and did not provide any sworn testimony. Claimant was represented at the hearing by [REDACTED], [REDACTED] stipulated with the department that a decision would be rendered based on the medical record alone.

The department was represented by Cheryl Skinner (Hearing Coordinator).

By agreement of the parties, the record closed on July 28, 2010; no sworn testimony was presented for the record.

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 (December 20, 2009) who was denied by SHRT (July 1, 2010) due to claimant's ability to perform her past work (telemarketing).

Claimant requested retro MA for September, October, and November 2009.

(2) Claimant's vocational factors are: age--38; education--high school diploma; post high school education--unknown; work experience--unknown.

(3) Claimant's current Substantial Gainful Activity (SGA) status is unknown.

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

- (a) L5-S1 discitis;
- (b) Osteomyelitis;
- (c) Abscess formation;
- (d) Liver problems;
- (e) Shortness of breath;
- (f) Back pain; and
- (g) Hepatitis C.

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

OBJECTIVE MEDICAL EVIDENCE (July 1, 2010)

Claimant is alleging disability due to immune disorder, liver problems, shortness of breath and back pain. She is 38 years old and has a 12th grade education with a history of semi-skilled work.

SHRT used the following listings to evaluate claimant's eligibility: 1.01; 3.01; 5.05.

SHRT denied claimant's MA-P application because claimant is capable of performing her past work as a telemarketer.

(6) Claimant's Activities of Daily Living (ADLs) are unknown. Claimant was hospitalized at [REDACTED].

(7) It is not known whether claimant has a valid driver's license. It is not known of claimant is computer literate.

(8) The following medical records are persuasive:

(a) A SSA consultant exam (April 16, 2010) was reviewed.

The consulting internist provided the following diagnoses:

- (1) History of low back pain; and
- (2) History of Hepatitis C.

The consulting internist did not report any significant work limitations.

(b) A [REDACTED] discharge summary was reviewed.

HISTORY OF PRESENT ILLNESS:

This is a 37-year-old woman with a history of MSSA, endocarditis in 2008, a history of multiple pulmonary septic emboli, IV drug addict, who recently was seen at [REDACTED], a month ago for back pain and abdominal pain, diagnosed with epidural abscess and vertebral osteomyelitis sterile biopsy (who left against medical advice and now presents to [REDACTED] after a month of complains of worsening low back pain and neurological symptoms.

* * *

PAST MEDICAL HISTORY:

- (1) IV drug addiction, heroin;
- (2) MSSA tricuspid endocarditis;
- (3) History of multiple pneumonias;
- (4) Migraines;
- (5) Bipolar disorder;
- (6) Positive Hepatitis C antibodies in the past;
- (7) Recent L5-S1 vertebral osteomyelitis;

- (8) L5-S1 discitis; and
- (9) Again, recent epidural abscess.

* * *

ASSESSMENT:

- (1) Back pain with fever, probably worsening of epidural abscess.

* * *

- (10) Nicotine dependence;
- (11) IV drug use;
- (12) History of positive Hepatitis C antibodies

* * *

The [REDACTED] physician did not report any work limitations arising out of the [REDACTED] admission.

(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. There is no clinical evidence of record to establish a severe mental impairment.

(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. The medical records do show that claimant was treated in [REDACTED], at [REDACTED], for IV drug addiction, heroin; MSSA tricuspid endocarditis; recent L5-S1 vertebral osteomyelitis; L5-S1 discitis; recent epidural abscess.

Neither the SSA internist nor the [REDACTED] internist reported that claimant had any significant work limitations.

(11) Claimant's status with the Social Security Administration (SSA) is unknown.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's physician summarized in the [REDACTED] hearing request as follows:

Claimant was hospitalized at [REDACTED] on ([REDACTED], [REDACTED]) for epidural abscess and osteomyelitis at L5, lower extremity edema, and pain management. She underwent MRI--L/S indicating L5-S1 discitis, osteomyelitis, and abscess formation; re-hospitalized on (February 1, 2010--February 28, 2010) for abscess for intraspinal osteomy. She has a remarkable history of MSSA endocarditis (2008), multiple pulmonary emboli and IDDA.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity (RFC) to perform her last work as a telemarketer.

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. PEM/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.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. PEM/BEM 260, pages 8 and 9.

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).

There is no testimony regarding claimant's work status on the record.

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, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(b).

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 found that claimant does not meet the severity and duration requirements because claimant is able to return to her previous work.

Since the medical evidence of record supports SHRT's determination that claimant is able to perform her past work as a telemarketer, claimant does not meet the requirements for MA-P at this time.

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/BEM 260. Claimant is not disabled for MA-P purposes based on Step 2 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 Ismael Ahmed, Director
Department of Human Services

Date Signed: August 9, 2010

Date Mailed: August 10, 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

2010-39925/JWS

cc:

