

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: 2010-42356
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 10, 2010
Jackson 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 August 10, 2010, in Jackson. Claimant personally appeared and testified under oath.

The department was represented by Amy Connell (FIM).

By agreement of the parties, the record closed August 10, 2010.

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/retro/SDA applicant (April 12, 2010) who was denied by SHRT (July 20, 2010) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.17 as a guide. Claimant requested retro MA for January, February and March 2010.

(2) Claimant's vocational factors are: age--47; education--10th grade; post high school education--none; work experience--tree farm laborer (seasonal) and exotic dancer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as an exotic dancer in 2002.

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

- (a) Hard to get up in the morning;
- (b) Light headedness;
- (c) Cannot walk without getting out of breath;
- (d) Double vision;
- (e) Shortness of breath;
- (f) Asthma;
- (g) Chronic obstructive pulmonary disease;
- (h) Emphysema;
- (i) Hypertension;
- (j) Panic attacks and anxiety.

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

OBJECTIVE MEDICAL EVIDENCE (July 20, 2010)

In 11/2009, claimant had coarse breath sounds and coarse rhonchi (page 47). Diagnosis included acute bronchitis and asthma (page 45).

In 1/2010, claimant reported that she becomes nervous, but has no history of panic attacks. Claimant is 4'10" tall and weighs 98.4 pounds. Oxygen saturation was 97% on room air. The lungs

revealed hyper resonance on percussion. Breath sounds were heard up to the basis. Expiration was prolonged. There were both inspiratory and expiratory rhonchi. Motor bone tone and strength were normal in the upper extremities. Reflexes were symmetrically present. There were no sensory deficits. Pulmonary function study showed FEV 1 was 2.34 and FEV C was 3.55 (records from DDS).

ANALYSIS:

Claimant is a smoker with progressively increasing shortness of breath, with chronic bronchitis. She did have hyper resonance on percussion and prolonged expiration. There were inspiratory and expiratory rhonchi. Her breathing test did not meet program severity levels. She denied history of panic attacks, reported that she becomes nervous.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming, laundry, and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant was not hospitalized as an in-patient in 2009 or 2010.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] consultative examination was reviewed.

The consulting physician reports the following history:

Claimant is a 46-year-old female who was a rather poor historian. She does admit to smoking one pack of cigarettes from age 13 for a total of 33 years and decreased it to six to seven cigarettes a day for the last two years.

She states she has been short of breath all her life and was born with asthma. When asked the details, she states she will have cough and wheezing on and off with her triggers being dog and cat dander as well as horses. She cannot recall the details of her asthma attacks and it appears she

was never on steroid inhalers. However, she does not recall any hospitalizations either. She states she has always been short of breath but now more for the last five years which has been progressively getting worse and she cannot walk more than 20 steps. She can do her activities of daily living, but very slowly. She does not vacuum the house and cannot lift or carry any heavy objects of more than a few pounds. She states most of the time she coughs and wheezes and has to lie on her side. She has recently been given an Atrovent inhaler which she uses from her sister. One year ago, she did develop pneumonia and bronchitis at which time she was told in the hospital that she had asthmatic bronchitis, chronic obstructive pulmonary disease and emphysema. She has not been in congestive heart failure. There has been no swelling of her feet. No history of hypertension. No history of angina other than a feeling of tightness and she gets short of breath.

The consulting internist provided the following assessment:

- (1) Claimant is a 46-year-old female who is a chronic smoker and has progressively increasing shortness of breath with chronic persistent bronchitis. She gives some history of allergies to cat and dog dander. She states she has a history of asthma. Her clinical examination and symptoms are consistent with a diagnosis of chronic obstructive pulmonary disease.
- (2) Baseline spirometry was done in the office.
* * *

These spirometry findings show some small airway disease. I think she needs diffusion DLCO or diffusion capacity to be done for a diagnosis of emphysema, as clinically she evidently does have a significant amount of chronic obstructive pulmonary disease. She also needs to quit smoking and have counseling for nicotine cessation.
* * *

- (3) Her back pain is very mild and examination is noncontributory.
* * *

(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. The claimant does not allege disability based on a mental impairment. Although she did report infrequent panic attacks.

(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 has a diagnosis of chronic smoker, emphysema, and chronic obstructive pulmonary disease. The consulting internist did not state that claimant was totally unable to work.

(11) Claimant thinks she is eligible for MA-P/SDA due to her breathing dysfunction.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration (SSA). The SSA recently denied her claim. The claimant has filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA benefits based on her breathing dysfunction. She also has lightheadedness when she gets up in the morning.

DEPARTMENT'S POSITION

The department thinks that claimant retains the capacity to perform a wide range of simple unskilled light work.

Based on claimant's vocational profile, younger individual, limited education and a history of unskilled and semi-skilled work (the department denied MA-P using Med-Voc

Rule 202.17). SDA was denied because the nature and severity of claimant's impairments do not preclude all work activity for 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).

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 (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/DA purposes. PAM/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 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/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. PAM/BEM 260/261.

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).

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

Therefore, 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 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/SDA, the claimant must satisfy both the gainful work and 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). SHRT found that claimant meets the severity and duration requirements using the *de minimus* test.

Therefore, 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 a Listing.

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

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously work was exotic dancing. This was light work.

The medical/vocational evidence of record shows that claimant's ability to breathe normally is severely limited. Claimant also has difficulty walking because she becomes short of breath and experiences dizziness. Based on the medical evidence of record, claimant is not able to return to her previous work as an exotic dancer (light semi-skilled work).

Therefore, 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 able to perform unskilled sedentary work.

It should be remembered that even though claimant has significant physical impairments (chronic obstructive pulmonary disease), she does have significant residual work capacities. The consulting internist who performed the [REDACTED] examination did not report that claimant is totally

unable to work. Also, claimant performs many activities of daily living, including dressing, bathing, cooking, dish washing, light cleaning, vacuuming, and laundry.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her chronic obstructive pulmonary disease. Claimant currently performs many activities of daily living and has an active social life with her cousin, and drives an automobile approximately 30 times a month. The collective evidence in the record shows that claimant is able to perform unskilled sedentary work (SGA). This means that claimant is able to work as a ticket taker at a theater, as a parking lot attendant, and as a greeter for [REDACTED].

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 PAM/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.

SO ORDERED.

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

Date Signed: August 23, 2010

Date Mailed: August 23, 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

cc:

