

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: 2010-5588  
Issue No: 2009; 2008  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
December 16, 2009  
Eaton 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 December 16, 2009, in Charlotte. Claimant was represented by [REDACTED]

[REDACTED].

The department was represented by Nellie Harvey (AP worker).

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P) and 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) and 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 applicant (May 27, 2009) who was denied by SHRT (November 12, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. SHRT relied on 20 CFR 416.920(c). Claimant requests retro MA for February, March and April 2009. The disputed eligibility period is May 27 through December 16, 2009.

(2) Claimant's vocational factors are: age--50; education--8th grade; post high school education--none; work experience--home health worker under the auspices of the Department of Human Services, cook's helper at [REDACTED]

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when she worked as a home health worker funded by the Department of Human Services.

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

- (a) Hepatitis C;
- (b) Hypertension (HNT);
- (c) Morbid Obesity;
- (d) Degenerative disc disease of the L/S spine;
- (e) Arthritis of the bilateral knees;
- (f) Replacement of the right knee recommended;
- (g) Depression; and
- (h) Anxiety.

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

### **OBJECTIVE MEDICAL EVIDENCE (November 12, 2009)**

SHRT decided that claimant did not establish an impairment which meets the severity and duration requirement. SHRT evaluated claimant's impairments using SSI Listings 3.01, 1.01, and 5.01. SHRT decided that claimant did not meet any of the applicable SSI Listings. SHRT denied disability based on 20 CFR 416.920(c)

because claimant did not establish an impairment due to lack of severity and duration.

(6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, cooking (sometimes), light cleaning (sometimes), and grocery shopping (needs help). Claimant uses a cane approximately 30 times a month. She uses a walker approximately five times a month, a shower stool approximately four times a month. Claimant does not use a wheelchair and does not wear braces. Claimant received inpatient hospitalization in 2009 for pneumonia on two occasions.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) An [REDACTED] history and physical was reviewed.

The internist provided the following chief complaint:

- (1) Cough;
- (2) Right-sided chest discomfort with cough;
- (3) Complaint of fever.

The consulting internist provided the following history:

Claimant is a female who was transferred from the correctional facility with a complaint of cough with chest discomfort associated with deep breathing and cough and some fever. As per claimant, this started about two weeks ago. Since then, she was having symptoms on and off. She was brought to the emergency room today with the complaint of above symptoms. She has a productive cough with yellowish purulent sputum and at this time, is tinged with blood also. She does not have any fresh blood. Denies any significant shortness of breath.

Past Medical History:

- (1) Hepatitis C positive;
- (2) History of hypertension;
- (3) Arthritis;
- (4) History of liver failure in the past.

The consulting internist provided the following impression:

- (1) Cavitory pneumonia;
- (2) History of exposure to tuberculosis in the past.
- (3) High risk for tuberculosis as she has multiple admissions to the correctional facility and prison system.
- (4) History of Hepatitis C and substance abuse.
- (5) Hypertension.

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

The internist provided the following history:

This is a 50-year-old female patient was admitted on 4/25, with cough, right-sided chest pain, fever, shortness of breath. Please review H&P for complete details. She was found to have a community-acquired pneumonia with abscess/empyema. The patient was subsequently placed on antibiotics, and CT drainage of the right abscess was done.

\* \* \*

The consulting physician provided the following diagnosis:

- (a) Community-acquired pneumonia with empyema, requiring chest drain;
- (b) Anemia, likely related to acute infections;

- (c) Hypertension;
- (d) Constipation;
- (e) History of polysubstance abuse;
- (f) Gastroesophageal reflux disease;
- (g) History of Hepatitis C virus.

**Note:** The physician did not state that claimant is totally unable to work .

(9) Claimant alleges disability based on a combination of mental impairments: depression and anxiety. Claimant did not provide any assessments by a psychiatrist or psychologist. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity. There is no medical evidence in this record of a mental impairment that would totally preclude employment.

(10) The probative medical evidence 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 alleges disability based on a combination of physical impairments: Hepatitis C, hypertension, degenerative disc disease of the lumbosacral spine, arthritis of the bilateral knees, hand swelling, low back pain, shortness of breath, and inability to stand/walk for long periods. The [REDACTED] records provide the following diagnoses: cavitory pneumonia; history of exposure to tuberculosis, high risk for tuberculosis due to admissions to the correctional facility; history of Hepatitis C and substance abuse; hypertension. There is no current probative medical evidence in the record to establish that claimant is totally unable to work based on her combination of exertional impairments.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied claimant's application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

Claimant's impairments are summarized by [REDACTED] in the hearing request:

\* \* \*

Claimant is a 50 year-old female with eight years of formal education and a history of unskilled work. She was hospitalized in 2009 for pneumonia and a CT guided drainage of lung abscesses and readmitted in June 2009 for pneumonia as well. In addition, claimant has a remarkable history of Hepatitis C, hypertension, morbid obesity, degenerative changes of the L/S spine, severe arthritis of the right knee requiring a total knee replacement (recommended) and mild arthritis of the left knee. Claimant alleges depression and anxiety and requires assistance of ADL's.\*\*\*

**DEPARTMENT'S POSITION**

The department thinks that claimant has a residual functional capacity to perform normal work activities.

The department assessed claimant's impairments using SSI Listings 3.01, 1.01, and 5.01. Claimant does not meet any of the applicable listings.

The department denied claimant's application for disability based on her failure to establish a severe impairment under 20 CFR 416.920(c).

**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).

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).

To determine to what degree claimant's alleged mental impairments limit her ability to work, the following regulations must be considered.

**(a) Activities of Daily Living.**

**...Activities of daily living** including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

**(b) Social Functioning**

**...Social functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning

by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

**(c) Concentration, Persistence or Pace.**

**...Concentration, persistence or pace** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

**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 260/261. "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/SDA purposes.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working, or otherwise 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. Therefore, claimant meets the Step 1 disability test.

**STEP #2**

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Claimant must establish an impairment which is expected to result in death, has existed for 12 months and/or totally prevents all current work activities. 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).

Using the *de minimus* standard, claimant meets the severity and duration requirements in 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 the Listings.

However, SHRT evaluated claimant's eligibility using SSI Listings 3.01, 1.01 and 5.01. Claimant does not meet any of the applicable Listings.

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

**STEP #4**

The issue at Step 4 is whether claimant is able to do previous work. Claimant was last employed as a home health worker by the Department of Human Services. This was medium work.

The medical evidence of record establishes that claimant has arthritis of the bilateral knees, degenerative disc disease of the lumbosacral spine and the inability to stand and walk for long periods. Claimant's previous work as a home health worker requires claimant to stand for long periods and to do heavy lifting, when requested.

Claimant's degenerative disc disease and arthritis of the bilateral knees preclude her from performing her previous work as a home health worker.

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.

**Claimant has the burden of proof** to show by the preponderance of the medical evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a combination of mental impairment: depression and anxiety. Claimant did not provide any clinical reports by a Ph.D. or psychologist or an M.D. psychiatrist. Also, claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity. The medical evidence in the record does not establish a severe mental impairment at this time.

Second, claimant alleges disability based on combination of physical impairments: degenerative disc disease of the lumbosacral spine, arthritis of the bilateral knees, Hepatitis C, hypertension, shortness of breath and obesity. The medical reports provided by physicians from [REDACTED] provide the following impression: (1) Cavitory pneumonia; (2) History of exposure to tuberculosis; (3) High risk for tuberculosis in the past due to multiple admissions to correctional facilities; (4) History of Hepatitis C and substance abuse; hypertension. The physicians who examined claimant did not state she was totally unable to work.

Third, claimant testified that a major impediment to her return to work was her low back pain and bilateral knee 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 profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combined impairments. Claimant performs several activities of daily living, has an active social life with the friend with whom she lives.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled sedentary work (SGA). In this capacity, she is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would afford claimant a sit-stand option at the workplace.

#### 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 under PEM 260/261.

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: May 17, 2010


Date Mailed: May 18, 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

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