

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 20109653
Issue No: 2009
Case No: [REDACTED]
Hearing Date: February 16, 2010
Lapeer 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 February 16, 2010, in Lapeer. Claimant personally appeared and testified under oath.

The department was represented by Kim Smith (AP worker).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

1. Did claimant establish a severe mental impairment expected to preclude her from substantial 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)?

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 (September 16, 2009) who was denied by SHRT (December 18, 2010). SHRT relied on its determination that claimant had a non-severe impairment/condition (20 CFR 416.920)

and was capable of performing other work. Claimant requests retro MA for July, August, and September 2002.

2. Claimant's vocational factors are: age--22; education—high school diploma; post high school education—attending [REDACTED], has completed 4 semesters at [REDACTED]; work experience—certified nurse aide at a long term care center.
3. Claimant has not performed Substantial Gainful Activity (SGA) since 2009, when she worked as a certified nurse aide at a long term care center.
4. Claimant has the following unable-to-work complaints:
 - a. Abdominal pain;
 - b. Kidney stones; and
 - c. Status post kidney stone surgery.
5. SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (DECEMBER 18, 2010)

CLAIMANT INFORMATION:

Claimant is alleging disability due to kidney stones, learning disability, and back pain. She is 22 years old and has 13 years of education and a history of no reported work.

SHRT evaluated claimant using listings 1.04, 6.01, and 12.01.

DHS 49B interview form states the following:

Claimant is a 21 year old female who is a student at [REDACTED]. She has been suffering with kidney stones since 2006 and they still have not resolved. She has been in and out of the ER for this period claimant recently had surgery and was told doctors could not find any stones. So after she went back into the ER with the same symptoms and was diagnosed with having kidney stones. She is in need of another surgery to resolve this.

6. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry, and grocery shopping.

7. Claimant has a valid driver's license and drives and automobile approximately 30 times a month. Claimant is computer literate.
8. 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. Claimant did not provide the department with a clinical assessment of her mental status.
9. The probative medical evidence, standing alone, does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions for required period of time. Claimant recently had surgery and was advised by her doctors that she did not have kidney stones. The physicians who performed claimant's surgery did not state that claimant is totally unable to work based on her kidney stone condition. There is no evidence in the record that claimant's family doctor has issued a "no work" order.
10. Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration (SSA).

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 Bridges Administrative Manual (BAM), the Bridges 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).

Claimant has the burden of proof to show by preponderance of the medical evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P purposes. BEM 260. Disability, "as defined" by MA-P standards is the legal term which is individually determined by consideration of all factors in each particular case

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).

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 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 disability 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. BEM 260.

Also, to qualify for MA-P, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment of 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). BEM 260. SHRT decided claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets 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 a Listing. Furthermore, SHRT evaluated claimant's eligibility under Listings 1.04, 6.01, and 12.01, and concluded the claimant was not eligible on this basis. The SHRT decision with respect to claimant's Listing eligibility is adopted by reference.

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

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a certified nursing aid in a long-term care center. The medical/vocational evidence of record shows the claimant has a history of kidney stones. However, the physicians who performed surgery on claimant's kidney stones did not find any kidney stones. Furthermore, the surgeon did not say the claimant was totally unable to work due to her kidney stone condition.

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. 20 CFR 416.920(f). 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, taken as whole, establishes that claimant is able to perform unskilled, sedentary work. Claimant is currently attending [REDACTED] and commutes from her home in Lapeer to school. Notwithstanding claimant's kidney condition, claimant is able to work as a ticket taker for a theater, as a parking lot attendant, as a light duty janitor for a school, or as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to her return to work was her chronic back pain. Unfortunately, evidence of pain, alone, cannot be the basis for a disability determination under MA-P.

The Administrative Law Judge concludes that claimant's testimony about her pain and kidney stone dysfunction, and her kidney stone condition is credible and profound, but out of proportion to the objective medical evidence as it relates to claimant's ability to work. Although claimant's kidney stone dysfunction is a significant impairment, the medical record shows that the surgeons were unable to confirm the diagnosis of kidney stones. It should be remembered that even though claimant has a chronic kidney dysfunction, she does have demonstrable residual work capacity. She is able to perform many activities of daily living such as dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry, and grocery shopping. In addition, claimant is computer literate and can drive an automobile on a daily basis.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Also, it is significant that there is no "off work" order from claimant's primary care physician in the record.

The department has established, by the competent, material, and substantial evidence on the record that an act of in compliance with department policy when it decided that the claimant was not eligible for MA-P. Furthermore, claimant did not meet her burden of proof to show that the department's denial of her MA-P application was a reversible error.

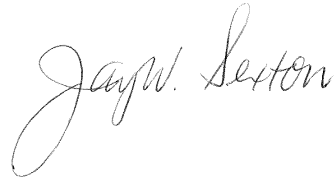
Based on this analysis, the department correctly denied claimant's MA-P/SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant does not meet the MA-P disability requirements under PEM/BEM 260. Claimant is not disabled for MA-P purposes based on Step 5 of the sequential evaluation process as described above.

Accordingly, the department's denial of claimant's MA-P application is, hereby, AFFIRMED.

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 8, 2011

Date Mailed: July 11, 2011

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/ar

cc:

