

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-2444
Issue No: 2009; 4031
Case No: [REDACTED]

Hearing Date:
December 7, 2010
St. Joseph 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 December 7, 2010, in Centreville. The claimant personally appeared and testified under oath.

The department was represented by Sheila Beaty (Program Manager) and Valerie Donley (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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/SDA applicant (September 12, 2009) who was denied by SHRT (October 29, 2010) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.
- (2) Claimant's vocational factors are: age--41; education—10th grade; post high school education--none; work experience—operated a forklift for [REDACTED], and worked in an auto parts store.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when she worked as a forklift operator.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Fibromyalgia;
 - (b) Unspecified nerve damage;
 - (c) Right hip pain;
 - (d) Right leg pain;
 - (e) GERD;
 - (f) Irritable bowel syndrome;
 - (g) Hernia; and
 - (h) Gastritis adhesions.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (October 29, 2010)

MEDICAL SUMMARY:

The physical examination done on 6/2010 reports the claimant is able to maintain her weight of 155 pounds and a height of 5 feet 7 inches. The abdomen area was free of a mass. She had a normal gait. (DDS medical records.)

ANALYSIS:

There was no objective evidence of a significant disabling physical or mental impairment that would preclude basic work activity.

* * *

- (6) Claimant lives with her sister and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning (sometimes), vacuuming, laundry and grocery shopping (sometimes). Claimant uses a cane approximately three times a month.

She does not use a walker, wheelchair or shower stool. Claimant wears a brace on her right wrist approximately twice a month. Claimant was not hospitalized in 2009 or 2010.

(7) Claimant has a valid driver's license and drives an automobile approximately six times a month. Claimant is able to walk around the block.

(8) The following medical records are persuasive:

(a) An August 9, 2010 progress note reports the following Impressions:

Claimant is a 41-year-old female who presents for follow up of meds. Also, she gets migraines and would like to refill Phernegan. She would also like Floricet. Ag Lpn.

Claimant states that she had abdominal surgery in 2006 after which she has pain from right side of the abdomen, extending into her right hip and right leg. Claimant takes Gabapentin, which helps with the pain to some extent. Needs something else to get through the day.

OBJECTIVE IMPRESSIONS:

Normal exam.

ASSESSMENT:

Diagnosis: Unspecified migraine not intractable; diagnosis pain in limb.

NOTE: The examining physician did not state that claimant was totally unable to work.

(b) A June 16, 2010 progress note was reviewed.

The physician provided the following subjective assessment:

Claimant is a 41-year-old female who presents for a BCCP, pap and breast exam. She also feels she needs a refill of all her meds.

* * *

OBJECTIVE ASSESSMENT:

Normal exam.

ASSESSMENT:

Routine gynecological exam.

* * *

NOTE: The examining physician did not report that claimant is totally unable to work.

- (9) Claimant does not allege a severe mental impairment as the basis for her disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.
- (10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do establish that claimant had successful abdominal surgery in 2006. Claimant has had some sequelae related to that surgery (right abdomen pain, right hip pain, and right leg pain). None of the physicians who evaluated the claimant in 2010 report that claimant is totally unable to work. The record does indicate that claimant is taking several pain prescriptions which prevent her from climbing ladders or stairs and working in elevated locations. At this time, however, there is no probative medical evidence to establish a severe disabling physical condition that totally precludes all sedentary work activities.
- (11) Claimant recently applied for federal disability benefits (RSDI/SSI) with the Social Security Administration. Her application was denied. Claimant filed a timely appeal.
- (12) Claimant reports that she currently smokes approximately ten cigarettes a day, against medical advice (AMA). Claimant also uses marijuana on a regular basis to control her pain.

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 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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically

acceptable clinical and laboratory diagnostic techniques....
20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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/SDA purposes. 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. 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 Step 1.

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

Using the *de minimus* standard, claimant meets Step 2.

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 Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a forklift operator. This was light work. Her medical evidence of record shows that claimant has some pain secondary to her 2006 abdominal surgery. However, this pain does not prevent her from returning to her previous work as a forklift operator.

Therefore, claimant does not meet Step 4.

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 medical/psychiatric evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on fibromyalgia, nerve damage, right hip pain, and right leg pain. Unfortunately, there is nothing in the medical record to establish that claimant's 2006 abdominal surgery was not successful. None of the physicians who provided reports on claimant's physical condition stated she was totally unable to work.

Third, claimant alleges disability due to her fibromyalgia, nerve damage, right hip pain and right leg. 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. Currently, claimant performs many activities of daily living, and drives an automobile approximately six times a month. In addition, claimant is computer literate.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform 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].

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 it acted in compliance with department policy when it decided claimant was not eligible for MA-P/SDA. Furthermore, claimant did not meet her burden of proof to show the department's denial of her application was reversible error.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis as described above.

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 BEM 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 15, 2011

Date Mailed: August 15, 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 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:

