

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-7816

Issue No: 2009

Case No: [REDACTED]

Hearing Date:

February 9, 2011

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, a telephone hearing was held on February 9, 2011, in Kalamazoo. The claimant personally appeared and testified under oath.

The department was represented by Shannon Wagoner (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?
- (2) Did claimant establish a severe physical impairment expected to preclude him 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 applicant (June 30, 2010) who was denied by SHRT (December 13, 2010) due to claimant's ability to perform unskilled light work.

- (2) Claimant's vocational factors are: age--33; education—11th grade; post high school education--none; work experience—receptionist at [REDACTED], timekeeper and store manager at [REDACTED], retail sales clerk for [REDACTED] store and restaurant worker.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2010 when he was a receptionist for [REDACTED].
- (4) Claimant has the following unable-to-work complaints:
 - (a) Spinal dysfunction;
 - (b) Fibromyalgia;
 - (c) Slipped disc; and
 - (d) Osteoarthritis in knees and back;
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (December 13, 2010)

MEDICAL SUMMARY:

An MRI of the thoracic spine in 11/2008 showed mild degenerative disc disease at the T8-T9 level (page 55). The MRI of the lumbar spine also showed mild degenerative changes at L4-L5 (pages 56-57). The physical examination in 9/2010 reported a normal range of all joints. He had a normal gait and motor strength of all extremities. He also had intact sensation (DDS medical records).

ANALYSIS:

The objective medical evidence present does not establish a disability at the listing or equivalent level. A collective medical evidence shows that claimant is capable of performing a wide range of light work.

* * *

- (6) Claimant lives with his live-in partner and his partner's family and performs the following Activities of Daily Living (ADLs): dressing, bathing (sometimes), cooking (sometimes), dishwashing (sometimes), light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2010 or 2011.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant goes visiting approximately twice a month. Claimant cares for two dogs and a cat. Claimant smokes approximately 21 cigarettes a day.

(8) The following medical records are persuasive:

(a) [REDACTED] report was reviewed. The doctor of osteopathy provided the following information.

HISTORY:

I had the pleasure of seeing claimant at [REDACTED]. Claimant is a 32-year-old male with the following complaints:

- (1) Neck pain;
- (2) Shoulder pain bilaterally radiating down the left arm; and
- (3) Low back pain bilaterally.

He was accompanied by a driver. Claimant's pain started four years ago and is not associated with an accident or injury. The onset of the pain was gradual. Claimant considers his pain to be moderate. The current pain severity is rated as a 5.5 on a scale of zero to 10. The maximum severity is 10 on a scale of zero to 10. Claimant describes his pain as having an aching, stabbing quality. The pain occurs constantly and is somewhat relieved with rest and lying down. Aggravated when sitting, standing, walking, bending, lifting, coughing, sneezing and weather changes. Claimant's pain radiates to the arm on the left. It has limited going to work. Here for back pain. **Back pain since a kid.**

Claimant complains of change in bowel function. He denies unexpected weight loss. He reports that his sleep pattern is poor.

Claimant received some degree of relief from psychotropic medications; he did not receive significant relief from physical therapy.

PHYSICAL EXAM:

The osteopath provided the following report:

MUSCULOSKELETAL

Cervical: lordosis is normal. Pain is not worse with ROM in all planes. Facet signs are negative bilaterally. There are no palpable tender trigger points in the bilateral paracervical musculature.

Lumbar: lordosis is normal. Pain is work reflection. Facet signs are negative bilaterally.

Sacroiliac joints are non-provocative, bilaterally. There are no palpable tender trigger points in the bilateral paralumbar musculature.

ASSESSMENT:

Lumbar spondylosis.

* * *

NOTE: The examining osteopath did not state that claimant is totally unable to work.

- (9) Claimant does not allege a severe mental impairment as the basis for his disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49D or DHS-49E to establish his 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. An MRI of the thoracic spine in 11/2008 show mild degenerative disc disease at the T8-T9 level. An MRI of the lumbar spine also shows mild degenerative changes at the L4-L5 level. However, the physical examination in 9/2010 reported a normal range of motion of all joints. None of the physicians who evaluated claimant reported that he was totally unable to work. The record does indicate that claimant is unable to climb ladders or stairs, work at high elevations, or stand continuous for an eight-hour shift. 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. His application was denied; he filed a timely appeal.
- (12) Claimant is currently receiving UCB. In order to qualify for UCB, claimant certified that he is ready, willing and able to work.

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).

"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 his mental/physical impairments meet the department's definition of disability for MA-P purposes. 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, he is not eligible for MA-P.

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, 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 a Listing.

However, SHRT evaluated claimant's eligibility using the appropriate listings. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT's evaluation decision using the Listings is incorporated by reference.

Therefore, claimant does not meet Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant was last employed as a receptionist at a [REDACTED]. This was sedentary work. Because of claimant's combination of impairments, spinal dysfunction, fibromyalgia, slipped disc, and osteoarthritis, it would be difficult for claimant to sit continually for an eight-hour shift. This means that claimant is unable to return to his previous work as a receptionist for [REDACTED].

Therefore, claimant meets 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 his combined impairments meet the department's definition of disability for MA-P purposes.

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

Second, claimant alleges disability based on a combination of physical impairments: spinal dysfunction, fibromyalgia, slipped disc, osteoarthritis of the knees and back. Unfortunately, the medical evidence of record does not substantiate that claimant's current physical impairments totally preclude all work activity. None of the physicians who provided reports on claimant's physical condition stated that he was totally unable to work.

Third, claimant alleges disability due to chronic neck pain, shoulder pain, left arm pain and low back pain, bilateral. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P purposes.

The Administrative Law Judge concludes that claimant's testimony about his 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 his combined impairments. Currently, claimant performs many activities of daily living (ADLs) including: dressing, bathing (sometimes), cooking (sometimes), dishwashing (sometimes), light cleaning, mopping, vacuuming, laundry and grocery shopping. In addition, claimant has a valid drivers' license and drives an automobile approximately 30 times a month.

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, he is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Claimant would also be able to perform part-time work for H&R Block as a receptionist.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his 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 denied claimant's MA-P application. Furthermore, claimant did not meet his burden of proof to show that the department's denial of his application was reversible error.

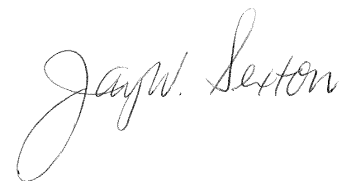
Accordingly, the department correctly denied claimant's MA-P application based on Step 5 of the sequential analysis as presented above.

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 disability requirements under BEM 260.

Therefore, 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: August 24, 2011

Date Mailed: August 24, 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:

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