

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: 2007-07337
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 9, 2007
Berrien 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 May 9, 2007 in Benton Harbor. Claimant personally appeared and testified under oath.

The department was represented by Janice Hren (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. Claimant did not submit any new medical evidence prior to the record close date.

ISSUE

Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work on a sustained basis 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 (October 27, 2006) who was denied by SHRT (April 10, 2007) due to claimant's ability to perform medium work. SHRT cited Med-Voc Rule 203.28 as a guide. Claimant requests retro MA for July, August, and September 2006.

(2) Claimant's vocational factors are: age--45; education--9th grade; post-high school education--GED; work experience--employed as a log splitter for a tree service company (unskilled) and did odd jobs in June 2006 (unskilled).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006, when he worked as a log splitter for a tree service company.

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

- (a) Lumbar disc disease;
- (b) Sciatic nerve dysfunction with pain;
- (c) Herniated disc with pain.

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

OBJECTIVE MEDICAL EVIDENCE (April 10, 2007):

A September 2006 MRI of the lumbar spine showed disc herniation at L5-S1. On examination, 9/2006, by the neurosurgeon, gait was normal. The range of motion of the lumbar spine was within normal limits with no point tenderness or spasms. Straight leg raise was decreased on the left. Muscle strength and tone were normal. Mobility and movement were not restricted. Sensation and reflexes were present and equal bilaterally. No nerve or muscle damage was reported. Use of the hands and fingers were fine and gross activity was normal. Claimant is independent in all activities of daily living and self-care skills. (A-1, page 27, 25)

ANALYSIS: Claimant has back pain. Gait was normal. Mobility and movement were not restricted. Grip and hand use was good. Activities of daily living are performed independently. It is assumed that claimant retains the capacity to perform at least

unskilled medium work that does not require heavy lifting or excessive exertion.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping (sometimes), sweeping (with a broom), laundry and grocery shopping.

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

(8) The following medical records are persuasive:

(a) A November 20, 2006 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following assessment:

CURRENT DIAGNOSES: Low back pain (left), sciatica; L5-S1 posterior disc protrusion.

PHYSICAL LIMITATIONS: Lifting and carrying--no limitations reported; standing/walking and sitting--claimant is able to stand and/or walk less than 2 hours in an 8-hour day. Arms: Claimant is able to use both arms normally. Feet/legs: Claimant is able to use his right leg normally.

* * *

(b) A September 18, 2006 neurosurgery report was reviewed.

The neurosurgeon provided the following assessment: I saw this very pleasant 44-year-old gentleman today for a neurosurgical consultation at your request. Thank you for some medical records about him. He brought in his lumbar MRI scan, which we reviewed together and I returned to him. He seems to be a good historian. He complains of left sciatic pain with some burning in his back and some numbness going into the left big toe. He denies any right lower extremity symptoms. Back pain is less of an issue for him. He has had this now for about 5 months. There was no precipitating event that brought this on. He does not recall any accident or injury. There were no right-sided symptoms.

He has had no sphincter symptoms. He has had no motor complaints.

He has taken numerous types of analgesics without relief. He has been to more than one chiropractor on a number of occasions without any help. He lives by himself. He smokes 1/2 pack of cigarettes per day. He works splitting wood for a tree service. He has not worked since June of this year. His weight has been stable. There have been no constitutional symptoms.

He denies any history of hypertension, diabetes, nor thyroid problems.

He did undergo screw fixation of a left heel fracture some years ago. He has had no other operations nor hospital admissions. He has had no bowel nor bladder problems.

Mr. Y. is a thin, lean gentleman. After he undressed down to his underpants, I then examined him. He is muscular and deeply tanned in his upper torso. His casual gait was normal. Heel and toe walking did not reveal any weakness. He is able to squat and recover but has some difficulty bending at the waist due to back and especially left leg pain. Romberg's sign was negative. He had no spasm nor point tenderness to his back. Range of motion was full. He got on and off the examination table without difficulty. Head and neck motions were full. The cranial nerve examination was normal. The chest was clear and the heart had a regular sinus rhythm and the abdomen was benign.

He had normal above strength and tone to all motor groups of both upper extremities. He had no atrophy. He had no weakness. Sensation was preserved. Despite him not having worked since June, as he states, he has thick heavy calluses on both hands and a healing blister on the palm of his right hand. He has a number of scrapes and cuts on his torso and extremities.

Straight leg raising was positive on the left at about 45 degrees and negative on the right. I found no atrophy or weakness. Sensation was preserved. His reflexes were +2 and symmetric including both ankle reflexes. His feet were warm and his pulses were normal. Reverse straight leg raising was negative as was Patrick's sign.

Review of the lumbar MRI scan shows a disc herniation at L5-S1 on the left side, matching his clinical picture.

* * *

(9) The probative medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The examining neurosurgeon provided the following diagnosis: back pain, disc herniation at L5-S1. The neurosurgeon did not report any work limitations. The neurosurgeon's report, when taken in conjunction with the medical record as a whole, does not establish a severe physical impairment that would totally preclude Substantial Gainful Activity.

(10) Claimant's most prominent complaint is the low back pain he experiences secondary to his disc herniation at L5-S1.

(11) Claimant recently applied for Social Security benefits. The Social Security Administration has denied his application on two separate occasions.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above. The medical records provided by claimant verify the following physical diagnoses: disc herniation at L5-S1 with low back pain.

There are no psychiatric diagnoses in the record.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled medium work. Based on claimant's vocational profile (younger individual, age 45, with 12 years of education and an unskilled work history as a wood splitter), the department denied MA-P eligibility based on Med-Voc Rule 203.28. The department denied SDA based on

PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity for 90 days or more.

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 do 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).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that his physical impairments meet the department's definition of disability for MA-P and SDA purposes. PEM 260 and 261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by a 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 is earning substantial income, he is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability requirements.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means the severe impairment is expected to last for 12 continuous months or result in death. SHRT found that claimant meets the severity and duration requirements. The Administrative Law Judge agrees.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege that he meets any of the Listings.

Therefore, the Administrative Law Judge concludes that claimant does not meet the Step 3 disability requirements.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a log splitter for a tree trimming company. Claimant's work as a log splitter was heavy work..

The medical evidence of record establishes that claimant is able to perform medium work. Since claimant's previous work was heavy work, the Administrative Law Judge concludes that claimant is not able to do the lifting, standing, bending and walking required of a log splitter.

Therefore, claimant meets the Step 4 disability requirements.

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 *Dictionary of Occupational Titles*, published by the U.S. Department of Labor at 20 CFR 416.967.

The vocational evidence of record establishes that claimant is able to perform sedentary/light work. Claimant's vocational profile shows a younger individual (age 45) with a GED education and a history of unskilled work as a log splitter. The vocational and medical evidence of record, when taken in conjunction with the record as a whole, shows that claimant is able to perform Substantial Gainful Activity. The medical record substantiates the conclusion that claimant is able to work as a grocery store carry out person, a security guard, or a ticket taker for a theatre or as a parking lot attendant.

During the hearing, claimant testified that the major impediment to his return to work was his disc herniation in combination with his low back pain. Evidence of pain, alone, is insufficient to establish disability for MA-P and SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is 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 spinal dysfunction in combination with his pain. Claimant currently performs many activities of daily living. He is also independent in his self-care skills. Finally, the neurosurgeon who examined claimant did not report any work limitations based on claimant's physical examination.

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 PEM 260 and 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: July 23, 2009

Date Mailed: July 23, 2009

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 mailing date of the rehearing decision.

JWS/cv

cc:

