

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: 2007-07717
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 11, 2007
Muskegon 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 April 11, 2007 in Muskegon. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

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 new medicals prior to 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/SDA applicant (September 26, 2006) was denied by SHRT (March 21, 2007) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro benefits for June, 2006.

(2) Claimant's vocational factors are: Age -- 50; education -- high-school diploma; post high-school education -- received a certificate as a nurse's aide (2005); work experience -- temporary [REDACTED] employee at a plastics factory (one day) and machinist at an auto-parts factory (23 years) (semiskilled).

(3) Claimant has not performed substantial gainful activity (SGA) since December, 2006 when he worked at a plastics factory.

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

- (a) Arthritis in left wrist with pain;
- (b) Arthritis in left ankle with pain; and
- (c) Chronic back pain.

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

OBJECTIVE MEDICAL EVIDENCE (March 21, 2007):

Claimant was admitted in 6/2006 due to septic arthritis and substance abuse (p. 19).

Claimant was seen in ER 7/10/2006 due to onset of right-eye irritation. He was found to have a right-eye corneal abrasion. He was given drops and eye was patched (new information).

Office notes dated 7/18/2006 showed claimant had a history of substance abuse. On exam, claimant was 219 pounds. He did not appear to be in significant pain. He had mild tenderness and stiffness in both wrists and the left ankle. There was no local

swelling or effusion. No local warmth. Skin over infected site was healing and the wounds were well-healed (new information).

On 7/24/2006 claimant was seen at ER due to hand and foot pain. On exam, there was no lower extremity edema. Both of his wrists had entirely normal temperature. There was no erythema. No warmth. He had full range of motion (ROM). There was questionable subtle amount of swelling diffusely though. No lower extremity edema. The doctor was unable to reproduce any pain in the ankle on palpation. He had full ROM in both hands, wrists, ankles and feet. Sedimentation rate was normal. White count was normal (new information).

* * *

(6) Claimant performs the following activities of daily living (ADL's): Dressing, bathing, and cooking (sometimes).

(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) A [REDACTED] history and physical report was reviewed.

The physician provided the following medical history: Substance abuse. Cocaine and marijuana, history of hepatitis C; umbilical hernia repair (1997), aspiration of left ankle (6/12/2006) -- septic arthritis; essential hypertension (6/2006); and diabetes mellitus (1999).

The physician provided the following assessment and plan: (1) diabetes mellitus without mention of complication, type II; and benign essential hypertension.

(b) A [REDACTED] emergency room report was reviewed.

The physician provided the following history of present illness: The patient is a 49-year-old male who was admitted by [REDACTED] a month or more ago for septic arthritis. He apparently had drains placed, and had surgical IND of his hand. Since this was done and he was released he has

continued to be painful, but more so today and that is why he comes in. Denies fever. No vomiting. No redness, just pain to both wrists and both ankles. Though the hands are more painful than the lower extremities. No vomiting. No dizziness. No headache. No warmth to the skin. 10 point reviewed systems negative except as I have indicated above.

He has a history of hepatitis C, hypertension, diabetes. He has had an umbilical hernia repair, IND of the wrist, history of hypertension, diabetes in the family. Does not smoke but does use alcohol.

The physician provided the following provisional diagnosis: (1) evaluation of arthralgia; (2) ran out of medication.

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

The physician provided the following discharge diagnosis: (1) septic arthritis; (2) substance abuse; (3) hepatitis C; (4) hypertension; and (5) diabetes mellitus.

A [REDACTED] consultation was reviewed.

The physician provided the following assessment: Septic arthritis of the right wrist was probable tenosynovitis of the left hand. This picture is quite suspicious for disseminated gonococcal infection for which he is at risk by his behavior. Other concerns would be septic arthritis due to staphylococcus aureus or group B strep because of his diabetes and possible staphylococcus viridans because of his dental condition. In any case, he needs drainage of the left wrist because of the purulent nature of the aspirate as well as needle aspirate of the left foot which can be done during surgery.

* * *

- (9) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing customary work functions for the required period of time. The examining physician provided the following diagnoses: (1) diabetes mellitus;

(2) essential hypertension. None of the physicians who provided reports reports any limitation in claimant's ability to lift, walk, stand or sit. Although claimant had a period of recuperation after the infection was removed from his left hand and left ankle, there is no indication that claimant is not able to use his hands and arms normally. Likewise, claimant can use his feet and legs normally.

(10) Claimant's most prominent complaint is the pain he experiences in his left hand and left ankle.

(11) Claimant has applied for federal disability benefits. His application was recently denied.

CONCLUSIONS OF LAW

Claimant's Position

Claimant's position is described by [REDACTED] in claimant's hearing request as follows:

I am filing this hearing request on behalf of (claimant) to appeal the October 13, 2006 denial of his September 26, 2006 application for Medicaid and SDA with retro benefits to June, 2006.

Mr. (claimant) was hospitalized in June, 2006 for septic arthritis of his right wrist and left foot/ankle.

Mr. (claimant) was hospitalized in June, 2006 for septic arthritis of his right wrist and left foot/ankle. He is right-handed. Mr. (claimant) went to the emergency room in 2006 for corneal abrasion of his right eye. He also suffers from degenerative arthritis, hepatitis C, hypertension, diabetes mellitus and depression.

Department's Position

The department thinks that claimant has normal residual functional capacity. The department thinks that claimant has a history of substance abuse. Although he was admitted for treatment of septic arthritis in June, 2006, in July, 2006 his sedimentation rate was normal. In

July, 2006 there was no significant joint swelling or warmth. He had full range of motion in July. The department thinks that the medical evidence of record does not document a severe impairment that meets the severity and duration requirements for MA-P or SDA.

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 (formerly known as the Family Independence Agency) 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 (formerly known as the Family Independence Agency) 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, p. 34.

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

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since December, 2006 when he was employed as a temporary production-line employee by a local plastics factory. Claimant meets Step 1 requirements.

Step 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

At Step 2, the objective medical evidence of record indicates that claimant has not established a severe impairment or combination of impairments which have lasted or are expected to last for 12 continuous months. The onset date of claimant's septic arthritis is June, 2006. Claimant's septic arthritis was successfully treated.

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 does not meet the severity and duration requirements.

The Administrative Law Judge disagrees.

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.

At Step 3, claimant's impairments do not rise to the level necessary to meet the Listing of Impairments.

Step 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a temporary production worker in a plastics factory.

The medical evidence shows that claimant was unable to work during June, 2006 due to his right wrist and left ankle surgery.

However, the record indicates that claimant had a successful outcome from the surgery and did not have ongoing work limitations arising out of the surgery.

At Step 4, claimant has not established that he can no longer perform his prior work as a production-line worker at a plastics factory.

Therefore, claimant has failed to establish disability at Step 4.

The Administrative Law Judge will proceed to Step 5.

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 [REDACTED], published by the [REDACTED]. [REDACTED] at 20 CFR 416.967.

Sedentary work may be defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work may be defined as follows:

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The objective medical evidence in the record does not show that claimant lacks the residual functional capacity to perform other less strenuous work, or that he is physically unable to perform unskilled light or sedentary tasks as required during the workday.

There is no probative medical evidence in the record to indicate that claimant's ability to walk, stand, lift, carry or to work with his hands is severely limited in any way.

At Step 5, claimant is disqualified from receiving MA-P/SDA for the following reasons:

FIRST, claimant's septic arthritis was successfully treated by surgery in June, 2006.

There is no evidence in the record that it has continued for 12 months.

SECOND, claimant is able to do a number of activities of daily living showing that he has current ability to perform usual work functions.

THIRD, claimant has a history of substance abuse.

This triggers the [REDACTED] legislation, [REDACTED],

[REDACTED] The law states that individuals are not eligible and/or not disabled where drug addiction or alcohol is a material factor in claimant's impairments.

A careful review of the credible and substantial evidence on the record shows that claimant falls under the provisions of the [REDACTED] legislation because his substance abuse is material to his alleged disability.

During the hearing, claimant testified that the major impediment to a return to work was his septic arthritis in combination with hand and ankle pain. 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 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 right hand/left ankle septic arthritis in combination with his pain. Claimant currently performs several activities of daily living and has an active social life. The record as a whole suggests that claimant has the residual functional capacity to perform unskilled light/sedentary work.

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 Marianne Udow, Director
Department of Human Services

Date Signed: September 11, 2009

Date Mailed: September 14, 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 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/jj

cc:

[REDACTED]