

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: 2007-110553

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 4, 2007

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, an in-person hearing was held Kalamazoo on September 4, 2007. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Sue Lang (ES).

At SHRT's request, an interim order was entered directing the local office to obtain an internal evaluation by a licensed physician.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on October 5, 2007.

Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. Claimant did not submit new medical records by the Record Close Date.

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/retro applicant (October 30, 2006) who was denied by SHRT (June 5, 2007) due to claimant's failure to provide recent medical evidence in support of his application. At SHRT's request, an interim order directing the local office to provide claimant with an internist exam was issued.

(2) Claimant's vocational factors are: Age—47; education—10th grade; post high school education—GED. Claimant is currently enrolled at [REDACTED] working toward an [REDACTED]; work experience—supervisor of the men's division at the [REDACTED]; 20 years of experience as a machinist at a local tool and die factory.

(3) Claimant has not performed substantial gainful activity since May 2007 when he was a supervisor of the men's division at the [REDACTED].

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

- (a) Unable to stand more than one hour;
- (b) Unable to sit more than one hour;
- (c) Unable to walk more than one block;
- (d) Left side numbness;
- (e) Left hand and foot numbness;
- (f) Status post back surgery (July 2006).

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 5, 2007):

Claimant is status post 8/2006 laminectomy. As of 3/2007, claimant's representative reported that claimant had intractable pain and difficulty with ambulation.

ANALYSIS:

Additional medical evidence is needed for current functioning capacity.

* * *

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, and dishwashing (sometimes), vacuuming and laundry.

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

- (8) The following medical records are persuasive:

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

The admission diagnosis is:

- (1) L4-S5 disc herniation with left lower extremity radiculopathy and foot drop.
- (2) Back pain.

Discharge diagnoses are the same with neurosurgery attempting conservative management.

- (9) 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. There is no persuasive clinical evidence in the record that claimant has a mental impairment so severe that it interferes with normal work functions.

(10) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records show that claimant has the following diagnoses: L4-S5 disc herniation with left lower extremity radiculopathy and foot drop; and back pain.

(11) Claimant's most prominent complaints are back pain and difficulty walking long distances as well as standing and sitting for long periods of time.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. His application was recently denied by the Social Security Administrative.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized in the [REDACTED] Hearing Request as follows:

* * *

Claimant was hospitalized in July and August of 2006 for laminectomy with bone graft.

[REDACTED] continues to experience intractable back pain and difficulty ambulating.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant's medical record is insufficient to determine disability.

The department requested an internist evaluation to assess the severity of claimant's current impairments.

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).

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 mental/physical impairments meet the department's definition of disability for MA-P purposes. PEM 260. "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 is 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 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 the 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 definitions of severity/duration.

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

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 or combination of impairments which profoundly limit his physical or mental ability to do basic work activities; he does not meet the Step 2 disability requirements. 20 CFR 416.920(c).

SHRT found that the medical evidence submitted by claimant was insufficient to establish severity and duration.

Therefore, claimant does not meet the Step 2 disability requirements.

STEP #3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

Therefore, 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 supervisor of the men's division of a church-related mission.

Claimant's work as a supervisor of the men's division of a mission may be defined as sedentary work.

The medical/vocational evidence of record establishes that claimant is able to return to his previous sedentary work as a supervisor for a church mission.

Therefore, claimant does not meet 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 [REDACTED], published by the [REDACTED] [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes the claimant is able to perform sedentary work as a supervisor for a mission. In addition, claimant is able to work as a ticket taker for a theatre, as a parking lot attendant and as a greeter for [REDACTED].

Claimant's vocational profile shows a younger individual (age 47) with a GED education and current studies towards an [REDACTED].

During the hearing, claimant testified that the major impediment to his return to work was his low back pain secondary to his recent laminectomy. Evidence of pain, alone, is insufficient to establish disability for MA-P.

The Administrative Law Judge concludes the claimant's testimony 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 low back, secondary to his recent back surgery. Claimant currently performs many activities of daily living, has an active social life, and is a student at [REDACTED] [REDACTED] pursuing an [REDACTED]. Claimant thinks that, upon completion of his [REDACTED], he will be able to find work as a manager in the machine tool industry (sedentary work). Claimant is able to perform sedentary work, even if he becomes confined to a wheelchair.

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 PEM 260.

Claimant is not eligible for MA-P based on Steps 4 and 5 of the sequential analysis process as presented above.

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

SO ORDERED.

/S/

Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 3, 2009

Date Mailed: August 4, 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/sd/tg

cc:

