

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: Rodrigo Patmalnieks,

Claimant

Reg. No: 2007-13228
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 14, 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 in Kalamazoo on August 14, 2007. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Dan Ruple (ES).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. Claimant did not submit new medicals prior to 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) or 90 days (SDA)?

(2) Did claimant establish a severe physical impairment expected to preclude him 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 a MA-P/SDA applicant (November 19, 2006) who is denied by SHRT (June 4, 2007) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.10, as a guide.

(2) Claimants vocational factors are: Age—52; education—10th grade; post high school education—none; work experience—Supervisor at [REDACTED], window salesman at [REDACTED] and technician at [REDACTED].

(3) Claimant has not performed Substantial Gainful Work (SGA) since he was a supervisor for [REDACTED] in 2003.

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

- (a) Right and left shoulder dysfunction;
- (b) Rotator cuff tear;
- (c) Heart dysfunction;
- (d) Back dysfunction;
- (e) Status post left wrist surgery;
- (f) Left wrist arthritis.

(5) SHRT evaluated the medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (June 4, 2007):

On 1/26/2006, claimant had full anterior and posterior flexion of the shoulders. He had abduction to 80°, bilaterally. There was slight tenderness to the impingement test and tenderness at the insertion of the rotator cuff bilaterally. There were scars from his previous arthroscopy of the right shoulder. There was no tenderness over the acromial-clavicular joints. He had full range of motion (ROM) of the elbows. There was decrease in sensation

in the distribution of the ulnar nerve on the left hand. Intrinsic function was good in the hands. Sensation was intact. Deep tendon reflexes were intact and equal in the upper extremities (Page 33).

A medical assessment of ability to work related activities form, dated 1/30/2006 showed claimant could sit, stand and walk 4 hours each without interruption. He could sit, stand and walk 6 hours each with normal breaks. He could occasionally lift and carry 25 pounds (Page 35). He could frequently do simple grasping and fine manipulation with both hands. He could not reach above the shoulder level with either arm (Page 36).

Claimant was admitted 4/29/2006 to 5/1/2006 due to atypical chest pain with a negative stress test. He ruled out for myocardial infarction. He stated that he drank 7 beers a day and smoked 3 packs per day. He was strongly advised to stop smoking and drinking (Page 73).

Claimant was admitted 2/3/2007 for left sided chest discomfort. He was also having palpitations (Page 25). On 2/5/2007, claimant underwent cardiac catheterization with balloon angioplasty to the diagonal and stent placement to the proximal left anterior descending artery. The LAD had 70% proximal lesion involving the ostium of the first diagonal and after the procedure was performed, there was 0% residual. The first diagonal had an 80% ostial lesions which was reduced to less than 20% residual after the procedure (Page 22).

ANALYSIS: Claimant had bilateral shoulder impingement syndrome in 1/2006. The doctor indicated the claimant could lift and carry 25 pounds and could sit, stand and walk 6 hours each in a day. He could do simple grasping and fine manipulations with both hands. He should avoid reaching above the shoulder level with either hand. The claimant had balloon angioplasty and stent placement in 2/2007. Claimant could do light work avoiding frequent overhead reaching.

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

(7) Claimant has a valid driver's license and drives an automobile approximately 3 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED]
Cauterization report was reviewed.

The surgeon provided the following findings:

- (1) Severe single vessel disease;
- (2) Patent stent in the left anterior descending;
- (3) Preserved LV systolic function.

The cardiac catheterization was performed successfully.

(b) A January 25, 2006 independent orthopedic evaluation was reviewed:

The physician provided the following history:

Claimant is a 51-year-old right-handed male who developed right shoulder problems while working at [REDACTED]. He related the onset of symptoms to working overhead and reaching out and over lumber and picking up pieces of lumber. He developed more severe problems while operating a "bundler" which strapped bundles of lumber together. He continued to work at [REDACTED] but began using his left arm more than the right to protect the right shoulder. He developed symptoms of left shoulder pain. Claimant continued to complain of pain in the shoulder but continued to work. He was evaluated by his family doctor in April 2002 for the shoulder problems. [REDACTED] attempted to refer his to [REDACTED], but was unable to schedule an appointment for claimant. [REDACTED] did obtain an appointment with [REDACTED], for evaluation of claimant's right shoulder on July 9, 2002.

[REDACTED] examined claimant and reviewed his MRI of the right shoulder. Claimant did not respond to conservative management. [REDACTED] then scheduled an arthroscopy examination of the right shoulder, which was performed on 2/28/2003 at the [REDACTED].

Claimant states that he had some initial improvement, but later developed more pain in the right shoulder as he became more active. His left shoulder pain has persisted and is sometimes worse depending on his activities.

Claimant developed chest pain on August 11, 2003. He went to [REDACTED]. A cardiologist examined him and advised an emergency cardiac catheterization, which was performed on 8/12/2003. A stent was inserted at that time. Claimant was placed on anti-coagulants and anti-hypertensive medications following the cardiac procedures.

CURRENT STATUS:

Claimant complains of bilateral burning pain, which is worse on the right than on the left. He has been unable to sleep on his right side and must sleep on his left side or in the prone position. He has noticed occasional clicking in the shoulder. He has difficulty leaning over and reaching out when he attempts to clean his automobile. He can reach lower objects, but does not do well when he reaches high shelves.

The physician provided the following diagnosis:

- (1) Bilateral shoulder impingement syndrome;
- (2) Coronary artery disease;
- (3) Hypertension;
- (4) History of ulcers.

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions.

(10) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions.

(11) The medical records do show that claimant has bilateral shoulder impingement syndrome, coronary artery disease, hypertension and history of ulcers.

(12) Claimant's most prominent complaints are bilateral shoulder pain and heart dysfunction.

(13) Claimant filed an application for Federal disability benefits with the Social Security Administration. His claim was recently denied. He filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA based on the impairments listed in paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform a narrow range of unskilled light work.

Based on claimant's vocational profile (closely approaching advanced age)(52), 8th grade education and history of working as a lumber yard manager/supervisor and in home improvement, SHRT denied MA-P based on Med-Voc Rule 202.10 as a guide.

The department denied SDA because claimant's has not established that he is totally unable to perform any work for the required 90 days.

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 his physical impairments meet the department's definition of disability for MA-P/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.

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 that claimant is not currently performing SGA.

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.

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/SDA, 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 ability to do basic work activities, claimant does not meet the Step 2 disability criteria. 20 CFR 416.920(c).

SHRT found that claimant meets the severity and duration requirements. The Administrative Law Judge agrees.

Claimant meets 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 for [REDACTED].

Claimant's work as a supervisor for a lumber company 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 medical/vocational evidence of record establishes that claimant is able to return to his previous work as a supervisor for a lumber company.

The medical/vocational evidence shows that claimant can lift and carry 25 pounds and can sit, stand and walk six hours in a day. He can do simple grasping and fine manipulations with both hands. However, he should avoid reaching above the shoulder level with either hand.

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. The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled, sedentary/light work. In addition to working as a manager for a lumber company, claimant is able to perform work as a carry-out clerk at a grocery store, as a ticket taker for a theatre, as a pizza delivery driver, as a parking lot attendant and as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to his return to work was his shoulder dysfunction pain. Evidence of pain, alone, is insufficient to establish disability for MA/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 ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to perform any work, based on his bilateral shoulder dysfunction and his heart impairments. Claimant currently performs many activities of daily living, drives an automobile and has an active social life. This would suggest that claimant has the residual functional capacity to perform 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 because he able to perform sedentary/light work.

Claimant does not meet the MA-P/SDA disability requirements based on Steps 3, 4, and 5 of the sequential analysis as presneted above.

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: 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

cc:

