

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: 2007-14191
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 8, 2007
Ingham 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 in Lansing on August 8, 2007. Claimant personally appeared and testified under oath.

The department was represented by Ellen Arm (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

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 an MA-P/SDA applicant (February 15, 2007) who was denied by SHRT (July 3, 2007) based on claimant's ability to perform medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: Age -- 41; education -- 10th grade; post high-school education -- GED; work experience -- worked as a unit recreation aide in prison and as a shipping clerk/loading-dock worker for [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since 1999 when he worked as a loading-dock worker for [REDACTED].

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

- (a) Status post back surgery;
- (b) Back dysfunction;
- (c) Back pain; and
- (d) Uses a TENS unit for pain.

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

OBJECTIVE MEDICAL EVIDENCE (July 3, 2007)

A DHS-49 form in the file, dated 3/2007, showed claimant was 243 pounds and blood pressure was 122/60. His skin had chronic diffuse dermatitis. He had decreased range of motion (ROM) of the lumbosacral spine with moderate spasms. His neurological findings were within normal limits (p. 11). Claimant could never lift even 10 pounds and could not stand/walk six of eight hours, but could stand/walk at least two hours of an eight-hour day (p. 12).

A consultative exam dated 4/18/2007 indicated claimant ambulated with no assistive device. He was well-groomed. He was reluctant to engage fully in all the orthopedic exercises due to complaints of pain. His motor exam revealed no atrophy and manual muscle testing was normal. There was no muscle spasm in the spine. Grip was equal bilaterally. Sensory functions were intact to touch, vibration and scent. Straight-leg raising was negative bilaterally in the seated position. Deep tendon reflexes were equal with no sign of clonus. Claimant could forward flex only 30 degrees and then

he stopped, groaning with pain. The doctor indicated claimant had complaints of pain and excessive pain behavior (new information).

ANALYSIS: Claimant reported back pain and had excessive pain behavior. There was no evidence of neurological abnormality. The objective findings in the file do not support the significant level of limitations given on the DHS-49 form. The prison records indicated claimant had a laminectomy in 1998. Therefore, claimant will be limited from heavy lifting.

* * *

(6) Claimant performs the following activities of daily living (ADL's): dressing, bathing, cooking (sometimes), dishwashing (sometimes), laundry and grocery shopping.

(7) Claimant has a valid driver's license but has not driven an automobile in the last 30 days. Claimant is not computer literate.

(8) The following medical records are persuasive:

See SHRT's summary, paragraph #5, above.

(9) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing customary work functions. The medical records show that claimant has diagnoses of back pain, diabetes, hypertension and hyperlipidemia. Claimant states that he is compliant with his medications and his problems are controlled by his medications.

(10) Claimant's most prominent complaints are low back pain and restricted range of motion.

(11) Claimant has filed an application for federal disability benefits with the Social Security Administration (SSA). His claim was recently denied by the SSA. He has filed a timely appeal.

(12) Claimant is actively participating with [REDACTED] to find work which claimant is physically able to perform.

(13) Claimant has enrolled at [REDACTED] for the 2007 fall semester and plans to take courses in real estate and computers.

CONCLUSIONS OF LAW

Claimant's Position

Claimant thinks he is entitled to MA-P/SDA benefits based on the impairments reported in paragraph #4, above. Claimant is also actively participating in a program of rehabilitation at [REDACTED]. He is currently a student at [REDACTED].

Department's Position

The department thinks that claimant has the residual functional capacity to perform medium work. Based on claimant's vocational profile (a younger individual at age 41, with a GED education and a history of manual labor), the department denied claimant's MA-P application based on Med-Voc Rule 203.28. The department denied claimant's SDA application because the nature and severity of claimant's impairments do not preclude medium work for 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).

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/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. It should be noted, however, that claimant is currently active with [REDACTED] and is currently enrolled as a student at [REDACTED] for the 2007 fall semester.

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 abilities to do basic work activities, he does not meet the Step 2 criteria.

SHRT found that claimant meets the severity and duration requirements. Therefore, 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 recreation aide in prison and as a loading-dock worker for [REDACTED].

Claimant's previous work as a recreation aide 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).

The medical/vocational evidence of record establishes that claimant is able to return to his previous job as a recreation aide doing sedentary work. In the alternative, claimant is able to work as a bagger at a grocery store, as a ticket-taker at a movie theatre, as a parking-lot attendant or as a greeter for [REDACTED].

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] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Claimant's vocational profile shows a younger individual (age 41) with a GED education and a history of unskilled work as a recreation aide.

Since claimant is able to do sedentary work, the department correctly denied claimant's MA-P/SDA application.

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. Claimant is not disabled for MA-P/SDA purposes based on Steps 3, 4 and 5 of the sequential analysis, as presented 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 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/jj

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cc:

