

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: 2007-24133  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 10, 2008  
Oakland 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 Pontiac on January 10, 2008. Claimant personally appeared and testified under oath.

The department was represented by Audrey Harris (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the time limit requirements so that his new medical evidence could be reviewed by SHRT.

Claimant did not submit new medical evidence 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) 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 an MA-P/retro/SDA applicant (February 1, 2007) who was denied by SHRT (November 29, 2007) due to claimant's ability to perform a wide range of sedentary work. SHRT relied on Med-Voc Rule 201.21 as a guide. Claimant requests retro MA for November and December 2006 and January 2007.

(2) Claimant's vocational factors are: age—35; education—high school diploma; post-high school education—took courses in gunsmithing at [REDACTED]; work experience—worked as a delivery driver and laborer in a water bottling factory, as a gunsmith and as a machinist.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2000 when he worked as a delivery driver and general laborer in a bottled water factory.

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

- (a) Necrosis of the right hips;
- (b) Congestive heart failure;
- (c) Diabetes.

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

**OBJECTIVE MEDICAL EVIDENCE (NOVEMBER 29, 2007):**

Consultative examination of 3/2007 reported claimant to be 6'2" tall and weighing 294 pounds. His blood pressure was elevated at 130/100. He had minimal pitting edema, peripheral pulses.

Peripheral pulses in the lower extremities were not well palpated. All movement of the hip joints were restricted and painful. Gait and stance were normal. He could not squat more than 20% (page 7).

CT scan of the pelvis of 1/2003 demonstrated post traumatic arthritis in the right hip. MRI of the right hip in 1/2003 demonstrated a healing fracture with some changes that probably represent an avascular necrosis or osteochondral defect (page 47).

Hospital records of 2/2004 indicate that claimant was treated for chronic heart failure (CHF) and dilated cardiomyopathy and was noted to have an ejection fraction of 70% at that time (page 101).

ANALYSIS: Due to the combined effects of claimant's conditions, he should avoid heavy lifting, working around fumes and occasional stooping and crouching. He should be capable of performing sedentary work with the ability to change positions as afforded by normal breaks and lunch.

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(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, and grocery shopping. Claimant lives with his parents. He does not use a cane, walker, wheelchair or shower stool.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is computer literate.

(8) The following medical records are persuasive:

See paragraph 5, above.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. There are no psychiatric/psychological reports in the record. Claimant did not supply the department with a DHS-49D or DHS-49E for the purpose of evaluating claimant's residual mental capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records do show the following exertional impairments:

- (1) Probable alcoholic cardio myopathy/or chronic heart failure due to hypertension.
- (2) Diabetes mellitus Type II.
- (3) Post traumatic arthritis and aseptic necrosis of the right hip.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application; claimant 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 wide range of sedentary work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The medical evidence of record indicates that claimant retains the capacity to perform a wide range of unskilled sedentary work.

Claimant vocational profile is as follows: Younger individual (age 35) with a community college education and a history of work as a driver for a bottled water factory. The department denied claimant's MA-P application based on Med-Voc Rule 201.21 as a guide.

The department denied SDA based on PEM 261 because claimant is able to perform unskilled light work.

**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 mental/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.

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.

Unless an impairment is expected result in death, it must have lasted or be expected to last for a continuous period of at least 12 month. 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/mental ability to do basic work activities, he does not meet the Step 2 disability criteria.

SHRT found that claimant meets the severity and duration test.

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 truck driver and laborer for a bottled water factory. Claimant's work on the production line was light work:

**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 perform sedentary/light work. Claimant is able to perform his previous job as a production worker at a bottle-water factory.

Therefore, claimant does not meet the Step 4 eligibility test.

### **STEP 5**

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work.

Claimant has the burden of proof to show by the medical/vocational evidence of record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

Claimant's primary basis for disability is his right hip necrosis in combination with his congestive heart failure. Based on claimant's right hip dysfunction and his chronic heart failure, he should avoid heavy lifting, working around fumes and occasional stooping and crouching. However, the medical evidence does not establish that claimant is totally unable to do sedentary/light work. Claimant currently performs many activities of daily living, socializes with his parents and is computer literate. This means that claimant is able to perform light/sedentary work (SGA).

The medical/vocational evidence shows that claimant is able to work as a carry-out clerk at a grocery store, as a ticker taker for a theatre, as a parking lot attendant and as a greeter for Wal-Mart.

Therefore, claimant does not meet the Step 5 eligibility test.

Claimant believes he is entitled to MA-P/SDA based on his need for insurance coverage to obtain treatment of his conditions and to purchase his prescription medications.

However, based on a careful analysis of the entire record, the Administrative Law Judge concludes that the department correctly denied claimant's MA-P/SDA application because claimant is able to perform sedentary/light 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 260/261.

Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis procedure, 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 24, 2009

Date Mailed: August 24, 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 mailing date of the rehearing decision.

JWS/sd

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