

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: 2007-24822
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 20, 2008
St. Clair 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 February 20, 2008. Claimant personally appeared and testified under oath.

Claimant was represented at the hearing by [REDACTED], from [REDACTED] [REDACTED].

The department was represented by Chris Krisroutoski (FIM).

SHRT requested additional medical evidence to completely evaluate the claimant's eligibility for MA-P/SDA. Several appointments were scheduled with a state consulting physician, but claimant did not attend. A prehearing was held on the issue of whether claimant was entitled to have an additional medical exam scheduled. At the prehearing, the department agreed to schedule a third internist's examination, with the understanding that claimant would supply a doctor's excuse for his failure to apply for a previously scheduled doctor's appointment on January 4, 2008.

Claimant requested additional time to submit the new medical evidence requested by SHRT. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on June 9, 2009. Claimant waived the time limit requirements so that his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge made the final decision below.

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/SDA applicant (April 30, 2007) who was denied by SHRT (November 2, 2007 and June 13, 2009) due to insufficient medical evidence.
- (2) Claimant's vocational factors are: age—47; education—high school diploma; post high school education—none; work experience—tool and dye worker, [REDACTED] piloting ships for the [REDACTED] and service technician for the [REDACTED].
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a service technician at the Port Sanilac Marina, repairing boats in 2001.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Chronic pain;
 - (b) Vision dysfunction in both eyes;
 - (c) Balance/equilibrium problems;
 - (d) Status post eye surgery (June 2007).

- (e) Sleep dysfunction;
- (f) Breathing dysfunction;
- (g) Sarcoidosis (disease of the blood);
- (h) Chronic cervical and lumbar pain;
- (i) Arthritis;
- (j) Osteopenia and glaucoma.

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

OBJECTIVE MEDICAL EVIDENCE (November 2, 2007)

Treatment records in the file reported claimant having eye surgery with bilateral lens replacement. Claimant's treating physician assessed 7/2007 that claimant's vision was severely limited and basically could not do even sedentary level work.

ANALYSIS

No eye test or clinically documented medical information was submitted to document claimant's functional capacity. Additional medical information is needed.

* * *

(6) Claimant lives with two roommates and performs the following activities of daily living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, laundry (sometimes), grocery shopping (uses the Amigo electric car). Claimant does not use a cane, walker, a wheelchair or a shower stool.

(7) Claimant has a valid driver's license, but is unable to drive due to his recent eye surgery. Claimant is not computer literate.

(8) A July 2, 2007 Medical Examination Report was reviewed. The physician provided the following diagnosis:

- (a) Sarcoidosis, glaucoma, osteopenia, chronic hip pain and chronic cervical pain with radiculopathy.

The physician wrote the following work limitations: claimant is able to lift less than ten pounds. He is able to stand and walk less than two hours in an eight-hour workday. He is able to use his hands/arms normally. He is not able to use either legs or arms to operate foot controls.

- (b) On August 27, 2007, Medical Examination Report was reviewed. The physician provided the following current diagnoses: disc herniation, sarcoidosis, chronic pain, osteopenia, recurrent steroid use, chronic CS pain with radiculopathy, chronic hip pain, Hepatitis C, atypical CP, glaucoma/cataracts.

The physician states that claimant has the following work limitations:

Claimant is able to lift less than ten pounds occasionally. He is able to sit/stand/walk about two hours in an eight-hour day. He is able to sit about six hours in an eight-hour day. Claimant is able to use both hands for simple grasping and reaching; but not for pushing/pulling or fine manipulating. Claimant is not able to use his legs to operate foot controls.

- (c) A January 30, 2008 [REDACTED] narrative ophthalmology report was reviewed.

The ophthalmologist provided the following assessment:

This is just a brief letter regarding claimant. Claimant presented to my office a December 2007 with an ongoing complaint of decreased visual acuities. He has been previously treated by both a general ophthalmologist and a retinal specialist. His past medical history is significant for glaucoma, chest pain, heart attack, shortness of breath, liver disease and sarcoidosis. At the time of my examination, his visual acuities were correctable to 20/60 OD and 20/100 OS. Intraocular pressures were normal. Slip lamp examination revealed intraocular lenses in good position. Funduscopically, there was a C/malady ratio of 0.5 with some pallor to the optic nerve. There was some attenuation to the vessels along with floaters and vitritis noted. He appeared to be slight EPI retinal membrane in the left eye. There was focal scarring with elevated lesions in the periphery of the left eye. These may be underlined sarcoid lesions.

This patient will most likely continue to experience decreasing visual acuities. He will need to have extended follow-up and possible evaluations with a retinal specialist.

* * *

(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 clinical evidence from a Ph.D. psychologist or psychiatrist in the record. Claimant did not submit a DHS-49D or DHS-49E to establish a mental residual functional capacity.

(10) The probative medical evidence standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has sarcoidosis, glaucoma, and osteopenia, chronic hip pain, chronic CS pain and radiculopathy.

(11) Claimant recently applied for federal disability with the Social Security Administration. Social Security denied his claim. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that the treatment records in the file show claimant had eye surgery in 2007.

The department thinks that the current medical record does not establish an impairment which meets the MA-P/SDA severity and duration requirements.

The department suggested that claimant obtain an independent consultative physical examination by an internist, a chest x-ray and an eye test by an ophthalmologist.

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 does 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).

The 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 260/261. "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/SDA. SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working and performing the 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 test.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Claimant must establish an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all basic work activities.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

STEP #3

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

However, SHRT evaluated claimant using the SSI Listings in 20 CFR 404, Subpart F, Appendix. Claimant does not meet any of the applicable listings.

Therefore, claimant does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a boat service technician, a [REDACTED] ships, and a tool and die worker.

The claimant's most recent work as a service technician for the marina can be defined as follows:

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

The July 2007 Medical Examination Report states that claimant is not able to lift more than ten pounds frequently. He is not able to stand more than two hours in an eight-hour day. He is able to use his hands/arms normally, but is unable to use his feet/legs.

Based on these functional limitations, claimant is no longer able to stand for an entire eight-hour shift which is required in order to perform as a service technician for a marina.

Therefore, claimant meets the Step 4 eligibility test.

STEP #5

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on chronic pain, vision dysfunction in both eyes, balance/equilibrium problems, sleep dysfunction, breathing dysfunction, and sarcoidosis (disease of the blood). Although claimant is precluded from heavy lifting, the medical evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to his return to work is his chronic cervical and lumbar pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is profound and credible, but out of proportion to the objective medical evidence as it relates to the claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant performs a significant number of activities of daily living, including dressing, bathing, cooking, dishwashing, light cleaning, laundry (sometimes), and grocery shopping using the [REDACTED] electric cart. Claimant has a valid drivers' license but is unable to drive due to his recent eye surgery. The claimant is not computer literate. However, considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary work (SGA).

In this capacity, he was able to work as a ticket taker at a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type, would afford claimant a sit-stand option.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under Step 5 of the sequential analysis, as presented above.

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.

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: June 24, 2009

Date Mailed: June 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 receipt date of the rehearing decision.

JWS/tg

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