

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: 2007-26053
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 3, 2008
Otsego 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 Gaylord on January 3, 2008. Claimant personally appeared and testified under oath.

The department was represented by Cindy Hoover (ES) and Michelle Hagerman (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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

Claimant did not submit new medical records by the Record Close Date.

ISSUE

Did claimant establish a 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 (May 11, 2007) who was denied by SHRT (November 28, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.
- (2) Claimant's vocational factors are: age—54; education—high school diploma; post high school education—none; work experience—2 years as a [REDACTED] driver, 7 ½ years as a [REDACTED] driver and 2 years as a school bus driver.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a [REDACTED] taxi driver in January 2007.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Asthma;
 - (b) Blood clot in left leg;
 - (c) Swelling in left leg;
 - (d) Veinous deficiency;
 - (e) Inability to stand for long periods;
 - (f) Needs to elevate left leg on a regular basis.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (NOVEMBER 28, 2007):

A DHS-49 form in the file, dated 5/2007, showed claimant had asthma and deep vein thrombosis (DVT) despite treatment. His exam was within normal limits, except for marked swelling of the left leg which was 4" greater in size than the right leg (page 14). The doctor indicated that claimant could never lift any weight and could not do even 2 hours of standing, walking or sitting. The doctor did indicate that limitations were expected to last 90 days or more (page 15).

ANALYSIS:

Claimant had DVT in 5/2007 and his leg had significant swelling. However, there was no evidence of extensive brawn edema, stasis dermatitis, or recurrent/persistent ulceration, as required by the Listing. It is expected that DVT would improve with treatment and not prevent all types of work for 90 days or more.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, mopping (sometimes), vacuuming (sometimes); laundry and grocery shopping. Claimant does not use a cane, walker, wheel chair or shower stool.

(7) Claimant has a valid driver's license but did not drive an automobile at all in December 2007. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) 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 psychiatrist/psychological records in the record. Claimant did not submit a DHS-49D or a DHS-49E.

(10) The probative medical evidence does not establish an acute physical (exertional) 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: Asthma; left Deep Vein Thrombosis (DVT).

(11) Claimant has applied for federal disability benefits with the Social Security Administration. His application is currently pending.

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 claimant has the Residual Functional Capacity to perform normal work skills.

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 medium work.

The department denied claimant's MA-P application based on claimant's vocational profile [individual approaching advanced age) (54), with a 12th grade education, and a history of semi-skilled work as a taxi cab driver.]

The department denied SDA based on PEM 261 because the nature and severity of claimant's impairments do not preclude a wide range of unskilled work for 90 days or more.

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 criteria. 20 CFR 416.920(c).

SHRT found that claimant does not meet the severity and duration test.

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 Listing.

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 [REDACTED] taxi driver in 2007. Claimant's work as a [REDACTED] taxi driver is considered sedentary work.

Sedentary work is 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 unable to return to his previous job as a [REDACTED] taxi driver because he is unable to do the continuous sitting required of a cab driver.

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.

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

First, claimant's primary complaint is Deep Vein Thrombosis of the left leg.

A careful review of the evidence submitted into the record establishes that claimant is currently receiving treatment of his left leg dysfunction (DVT). The treatment appears to be progressing slowly, but successfully.

While it is true that claimant has some lifting restrictions, these lifting restrictions do not preclude him from returning to his previous work as a [REDACTED] driver.

Also, the medical/vocational evidence shows that claimant is able to perform sedentary/light work. This would include employment as a ticker taker for a theatre, as a parking lot attendant or as a greeter for [REDACTED]. Based on this analysis of claimant's exertional impairments, the department correctly denied claimant's MA-P/SDA application. Claimant does not qualify for MA-P/SDA disability benefits under Step 5 of the sequential analysis procedure.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet the MA-P/SDA disability requirements under PEM 260 and 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: August 24, 2009

Date Mailed: August 25, 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.

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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/sd

cc:

