

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: 2007-30060
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 28, 2008
Lapeer 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 Lapeer on February 28, 2008. Claimant personally appeared and testified under oath.

Claimant was represented by Georgia Patthanacharoenphon from L&S Associates.

The department was represented by Barb Pinch (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on August 24, 2009. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, 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 a MA-P/retro/SDA applicant (April 26, 2007) who was denied by SHRT (December 13, 2007) based on claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for January, February and March 2007. After the April 26 application was filed, claimant filed a subsequent application on July 31, 2007. This application is incorporated by reference.

(2) Claimant's vocational factors are as follows: age—29; education—10th grade; post high school education—none; work experience—worked as a self-employed siding installer for 5 years (until he fell off a ladder), also as a rough carpenter, as an iron worker and as a dishwasher.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he was a self-employed siding installer in December 2007.

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

- (a) Seizure disorder;
- (b) Status post left heel/ankle injury (December 2007);
- (c) Status post left ankle surgery (January 2008).

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

OBJECTIVE MEDICAL EVIDENCE (DECEMBER 13, 2007):

Claimant was hospitalized in 6/2007 due to a seizure. His physical exam, including an EEG, was normal; his seizure medications were adjusted (pages 29-91). SHRT denied claimant's application based on Med-Voc Rule 203.28 as a guide.

ANALYSIS:

The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of medium work.

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing (needs help), grocery shopping (needs help), uses an Amigo cart. Claimant is currently ambulating with crutches. He does not use a cane or a walker. He uses a wheelchair 7 days a week and a shower stool as needed. He does not wear braces on his legs or arms.

(7) Claimant does not have a valid driver's license and does not drive an automobile on a regular basis. Claimant is not computer literate.

- (8) The following medical records are persuasive:

(a) See the evaluation of medical evidence in paragraph 5, above.

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. There is no evidence in the record that claimant has ever been evaluated by a PhD psychologist or a psychiatrist. Claimant did not supply a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions. Claimant is currently unable to stand on his left ankle due to recent ankle surgery to repair a fracture. Claimant does have a history of seizure symptoms and is currently using seizure medications, successfully. Claimant fell from a ladder in December 2007 while he was working as a residential siding installer.

(11) Claimant has recently applied for federal disability benefits with the Social Security Administration. His application was denied. He has appealed.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant also requests retro MA for January, February and March 2007. After claimant filed his application for disability benefits based on his seizures, he injured his left ankle during a work accident. However, claimant did not timely submit his medical information on the left ankle surgery, which he had in January 2008. The record was left open so that claimant's January 2008 surgical records could be submitted to SHRT for review.

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC) to perform a wide range of medium work. At the time the department issued this decision, it was unaware of claimant's December 2007 left ankle fracture.

Subsequently, the department reviewed claimant's left ankle records and concluded that claimant was temporarily unable to do medium work. However, the department thinks that claimant is able to do unskilled sedentary 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 260/261. "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 eligibility test.

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 month from the date of application. 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 and mental ability to do basic work activities, he does not meet the Step 2 disability criteria. 20 CFR 416.920(c).

SHRT evaluated claimant's seizure condition and concluded that claimant does not meet the severity and duration requirements based on that condition.

Subsequently, SHRT reviewed claimant's left ankle fracture and found that claimant's fracture meets the severity test but is not expected to preclude all employment for 12 months or more. Therefore, claimant does not meet the Step 2 eligibility test.

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 a Listing.

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

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a residential siding installer. This is medium semi-skilled work.

It is obvious from the medical records that claimant can no longer climb ladders to apply siding on houses. However, he does still have residual functional capacity to perform unskilled sedentary work.

Due to claimant's inability to climb ladders, he is unable to return to his previous work as a siding installer.

Therefore, claimant meets 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. 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] [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 is able to work as a ticker taker for a theatre, as a parking lot attendant and as a greeter for [REDACTED] (as long as he has the use of a stool).

During the hearing, claimant testified that a major impediment to his return to work was the pain in his left ankle secondary to his January 2008 ankle surgery. Evidence of pain, alone, is insufficient to establish disability for MA-P and 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's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his status post left ankle surgery. Claimant's recuperation period would normally last less than 12 months. The Administrative Law Judge thinks that claimant will be able to do heavier work after his left ankle surgery has healed.

Based on this analysis, 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 the 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 Step 5 of the sequential analysis, as described 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: October 12, 2009

Date Mailed: October 13, 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.

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