

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: 2007-01980
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 7, 2007
Calhoun 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 Battle Creek on March 7, 2007. Claimant appeared by telephone from his home in Grand Rapids. Claimant was represented at the hearing by [REDACTED].

The department was represented by Linda Mathews (FIM) and Candance Stack (ES).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. Claimant failed to submit new medical evidence prior to Record Close Date.

ISSUE

Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work on a sustained basis 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 (June 30, 2006) who was denied by SHRT (January 4, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA-P for March, April and May, 2006.

(2) Claimant's vocational factors are: age--57; education--high school diploma; post-high school education--one semester at [REDACTED]; work experience--carry-out and bagger at [REDACTED], operating a roofing and siding business for 10 years (skilled).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2002 (when he was a bagger and carry-out worker for [REDACTED]).

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

- (a) Obesity;
- (b) Degenerative disc disease in the back;
- (c) Unable to walk for long distances.

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

OBJECTIVE MEDICAL EVIDENCE (January 4, 2007):

In 3/2006, he presented to the ER with right-sided weakness. He was diagnosed with a transient ischemic attack, which resolved before he was discharged. He did not exhibit any slurred speech or profound neurological deficits. He reported an extensive history of heavy alcohol abuse (pages 15-19). A 4/2006 exam noted non-insulin dependent diabetes. He weighed 327 pounds and his blood pressure was elevated at 150/80. His gait was normal. He did not have any neurological deficits and there was no evidence of any sensory neuropathy. He reported a history of carpal tunnel surgery. His lungs were clear and his speech was normal

(Exhibit A-1, page 9). A history of heavy alcohol abuse (e.g., drinking one pint per day) (Exhibit A-1, page 9). In 5/2006, the same physician noted a diagnosis of degenerative disc disease, Type II diabetes, hepatitis, alcoholism and hypertension (Exhibit A-1, pages 7-8).

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping.

(7) Claimant does not have a valid driver's license. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A May 24, 2006 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses: hypertension, diabetes mellitus, Type II, hepatitis C, C6-C7 disc disease, alcoholism and chronic back pain.

The physician provided the following work limitations: May lift up to 10 pounds occasionally; may stand and/or walk less than 2 hours in an 8 hour day; may do simple grasping; totally unable to operate foot controls.

(b) A [REDACTED] radiology report was reviewed.

The radiologist provided the following impression:

Multi-level acquired spinal stenosis due to degenerative disc disease at all lumbar levels. There is no single lesion that explains the reported findings.

(c) A [REDACTED] radiology report/MRI report was reviewed.

The radiologist provided the following impression: Large predominantly soft disc central protrusion at C6-7 resulting in moderate spinal canal stenosis. Mild acquired central canal stenosis at C3-4. Left paracentral predominantly soft disc at C5-6 with mild mass effect on the anterior cord.

- (d) A [REDACTED] consultation report was reviewed.

The physician provided the following overview:

Claimant is seen at the request of [REDACTED] and [REDACTED] for evaluation. He has pain in his back that radiates into his legs. He has numbness and tingling in his feet. The pain in his back exacerbates when he is up and about; especially bending, twisting, and lifting. He denies incontinence or stool or urine. He does report some give-away weakness in the lower extremities. Again, activity increases the pain. Rest decreases the pain. He has difficulty falling asleep and staying asleep. Appetite is unchanged. Physical activity is limited due to pain. Interpersonal relationships are troubled. Emotions are not reportedly impacted. Concentration is negatively impacted. The pain is described as aching, throbbing and sharp stabbing. Again, it is predominantly in the low back. He has some aching in his knees bilaterally. This seems to increase in consort with his low back pain. He has some mild thoracic back pain and some hand pain, which is much less than the low back discomfort.

Historically, patient has had pain for 30 years. He has had episodic increases in which conservative treatment, including rest has improved. His most recent episode, rest did not improve. He has taken episodic Vicodin, but this has not produced significant benefit for him. He does admit drinking alcohol to self-medicate. I cautioned him about this. Both from the standpoint of alcohol being a potential problem, given his history of past illicit substance use, and the negative/neurotoxic effects of alcohol.

The physician provided the following impressions:

I believe this patient has pain on the basis of lumbar radiculitis, lumbar spine degenerative disc disease, and lumbar spinal stenosis as well as probably osteoarthritis of the knees.

Plan: I discussed with patient his status. I discussed tight control of blood sugar. I discussed the potential that he may have peripheral neuropathy due to his diabetes, this would also help this. I discussed Neurontin, both for his current radicular pain and for his what I believe to be peripheral

neuropathic pain. I recommended a trial of epidural steroid injection. I cautioned him about the potential for steroids raising his blood sugar. * * *

(9) The probative medical evidence establishes an acute physical condition (lumbar radiculitis, lumbar spine degenerative disc disease, and lumbar spinal stenosis, as well as osteoarthritis of the knees (rule out). These conditions totally preclude claimant from performing customary work functions. Secondary to this, claimant has radiating pain from his back into his legs and numbness and tingling in his feet. The pain in his back exacerbates when he is up and about, especially bending, twisting and lifting.

(10) Claimant's most prominent complaints are status-post mini strokes, carpal tunnel syndrome (left arm), and degenerative disc disease of the cervical spine with chronic back pain. In addition, claimant is morbidly obese and has difficulty walking due to arthritis knees.

(11) Claimant filed an application for federal disability benefits with the Social Security Administration. His claim is currently pending before the Social Security Administration.

(12) Administrative Law Judge Landis Y. Lain issued a decision on claimant's application for SDA on September 19, 2006. ALJ Lain denied claimant's request for SDA benefits due to insufficient medical evidence.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

██████████ described claimant's position in his hearing request as follows:

I am filing this hearing request on behalf of claimant to appeal the 7/19/2006 denial of his 6/30/2006 application with retroactive coverage to March 2006. Claimant was hospitalized in March of 2006 for a transient ischemic attack. Claimant also suffers from hypertension, diabetes and a seizure disorder.

DEPARTMENT'S POSITION

The department thinks that claimant has a normal residual functional capacity and is able to perform usual work activities. The department thinks that the medical information does not demonstrate the presence of a severe impairment. The department denied claimant's MA-P/SDA application due to lack of severity and duration.

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, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The evidence of record shows that claimant is not currently performing SGA. Claimant meets Step 1, requirements.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means that the severe impairment is expected to last for 12 continuous months or result in death.

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

The Administrative Law Judge agrees for the following reasons:

First, claimant recently had a mild stroke. In addition, he has heart disease, alcoholism, arthritis (knees), and longstanding, chronic back pain.

Second, the medical records provided by the [REDACTED] physician verifies that claimant is suffering from a high level of chronic pain due to lumbar radiculitis, lumbar spine degenerative disc disease, and lumbar spinal stenosis as well as probable osteoarthritis of the knees.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege that he meets any of the Listings.

Therefore, the Administrative Law Judge concludes that claimant does not meet the Step 3 disability requirements.

However, in the alternative, we will proceed to the next step.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a bagger and carry-out aide for a local grocery store. Claimant was unable to continue in that capacity because he could not stand and walk continuously during the required 8 hour shift. Claimant is not able to perform the light work required of a carry-out worker at a grocery store.

However, in the alternative, we will proceed to the next step.

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 evidence of record establishes that claimant is not able to perform sedentary work. He is subject to chronic and severe radiating back pain as well as neuropathy in his lower extremities.

Claimant's vocational profile shows an individual of 57 (advanced age) with a high school education and a history of skilled work as a self-employed roofer and siding installer.

Based on a careful review of the evidence, in combination with claimant's testimony, claimant is unable to do sedentary work.

Based on this analysis, the department incorrectly 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 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, REVERSED.

SO ORDERD.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Marianne Udow, Director
Department of Human Services

Date Signed: September 11, 2009

Date Mailed: September 14, 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/cv

cc:

