

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: 2007-03368
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 6, 2007
Mecosta 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 Big Rapids on March 6, 2007. Claimant personally appeared and testified under oath.

The department was represented by Trish McHugh, FIM.

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. Claimant did not submit new medical evidence prior to the 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 (July 12, 2006) who was denied by SHRT (January 31, 2007) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.18.

(2) Claimant's vocational factors are: age—47; education—11th grade; post high school education—none; work experience—maintenance worker at bowling alley and carpet cleaner (unskilled).

(3) Claimant has not performed substantial gainful activity (SGA) since 1999 when he was maintenance and cleaning man at a bowling alley (unskilled).

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

- (a) Status post heart attack (May 2006);
- (b) Significant heart damage;
- (c) Degenerative disc disease (back).

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

OBJECTIVE MEDICAL EVIDENCE (January 31, 2007):

Hospital records of 5/2006 indicated claimant had an angiography with successful stenting to the proximal and distal right coronary artery after an acute inferior ST elevation myocardial infarction (Exhibit A-1, page 51).

Follow-up note of 6/26/06 indicated claimant denied chest pain, rest dyspnea and ankle edema. Physical exam was within normal limits with the exception of his blood pressure being elevated. His gait was noted to be intact (Exhibit A-1, page 56).

Medical Examination Report of 7/28/2006 indicated claimant had a diagnosis of: coronary artery disease and low back pain. The findings on areas of examination were within normal limits with the exception of tenderness in the paraspinal musculature of the lumbar spine. (Exhibit A-1, page 124.)

* * *

(6) Claimant performs the following activities of daily living (ADL's): dressing, bathing, cooking, dishwashing, light cleaning, mopping (sometimes), vacuuming (sometimes), laundry and grocery shopping (needs help carrying the bags).

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

(8) The following medical records are persuasive:

(a) A July 28, 2006 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnoses: Coronary artery disease, low back pain.

The physician provided the following work limitations:

Claimant is able to occasionally lift up to ten pounds. He is able to stand/walk at least two hours in an eight-hour workday. He is able to sit about six hours in an eight-hour workday. He is able to use his hands/arms for simple grasping, reaching, pushing-pulling and fine manipulating. He is able to operate foot controls. He has no mental limitations.

(9) The prohibitive medical evidence does not establish an acute physical condition expected to prevent claimant from performing customary work functions. The report dated July 28, 2006 states that claimant is able to lift ten pounds occasionally, stand/walk two hours in an eight-hour workday and sit six hours in an eight-hour workday. He has no limitations in the use of his hands-arms and no limitations in the use of his feet-legs.

(10) Claimant's application for federal disability benefits with the Social Security Administration was recently denied.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA based on impairments listed in Paragraph #4 above. The medical records provided by claimant verify the following diagnoses: Status post myocardial infarction (May 2006), arthritis, low back pain, heart attack and high blood pressure.

DEPARTMENT'S POSITION

The department thinks that claimant's impairments do not meet or equal the intent of a Social Security listing. The department thinks that the medical record shows that claimant retains the capacity to perform a wide range of light work. Due to claimant's heart condition and back condition, the department thinks that claimant should avoid heavy lifting and frequent stooping and crouching.

Based on claimant's ability to perform light work, the department consulted the Med-Voc Grids. Claimant's vocational profile (younger individual, age 46, limited education and a history of unskilled work, claimant's MA-P application must be denied based on Med-Voc Rule 202.18 as a guide.

The department denied SDA because the nature and severity of claimant's impairments do not preclude a wide range of light 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 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).

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 consideration of all factors in each particular case.

STEP #1

The issue at Step 1 is whether claimant is performing substantial and 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.

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 meets the severity and duration requirements.

The Administrative Law Judge agrees.

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.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a maintenance man for a bowling alley doing all types of odd jobs including cleaning and repairs.

The claimant's work as a maintenance man for a bowling alley was medium work. It may 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 medical evidence of record establishes that claimant is unable to return to his previous work as a maintenance man at a bowling alley because he is unable to do significant lifting or stooping or bending.

Based on this analysis, claimant is not able to return to his previous work as a maintenance man for the bowling alley.

STEP #5

The issue at Step 5 is whether claimant has the residual functional capacity 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 U.S. Department of Labor at 20 CFR 416.967.

The medical evidence of record establishes that claimant is able to perform at least unskilled light work. Claimant's vocational profile shows a younger individual (age 46), with an 11th grade education and a history of unskilled work. Based on Med-Voc Rule 201.18, claimant is not eligible for MA-P.

Claimant was also not eligible for SDA.

Based on this analysis, the department correctly denied claimant's MA-P/SDA applications.

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 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 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 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

cc:

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