

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: 2007-04460
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 2, 2007
Berrien 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 May 2, 2007 in Benton Harbor. Claimant did not appear. Claimant was represented at the hearing by [REDACTED]. The department was represented by Sandra MacMartin (FIM).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. Claimant did not submit new medical evidence by the Record Close Date.

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work on a sustained basis 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 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 31, 2006) who was denied by the SHRT (February 27, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirement. Claimant requests retro MA-P for April, May and June, 2006.

(2) Claimant's vocational factors are: Age -- 45; education -- eighth grade; post high-school education -- none; and work experience -- performed construction work, worked as a laborer at a fruit exchange, worked as a laborer at an animal shelter, and worked as a laborer at a foundry (unskilled).

(3) Claimant has not performed substantial gainful activity (SGA) since 2005 when he did manual labor for a construction company.

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

- (a) Learning disabilities;
- (b) Status post third-degree burns on the left side of his body;
- (c) Complications from treatment for burn injuries;
- (d) Movement of left arm is restricted; and
- (e) Movement of left leg is restricted due to skin grafting.

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

OBJECTIVE MEDICAL EVIDENCE (February 27, 2007):

Claimant is status-post successful inpatient treatment (4/14/2006) for burns to the left flank and a small area of the left arm. The conditions were aggressively treated at release and improved. On exam (4/18/2006) the grafts were healing well. The condition had improved and was assessed to be temporary and not lasting 90 days. Claimant's work history is compatible with his educational level. No significant mental limitations were clinically documented (p. 15).

Analysis: The impairments improved with treatment.

* * *

(6) Claimant performs the following activities of daily living (ADL's): Dressing and bathing.

(7) Claimant does not have a valid driver's license and does not drive an automobile.

Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) An [REDACTED] consultation summary was reviewed.

The physician provided the following discharge diagnosis: 13 percent total body surface area burns, left lateral flank and left arm; rule out respiratory injury.

Summary of treatment: Patient is an otherwise relatively healthy, 45-year-old male, who was intoxicated. He was jumping over a fire and fell into the fire sustaining clothing catching on fire and burns to the left lateral flank and medial arm. He was transferred for care of his burns. He was admitted into the hospital where he underwent initial burn wound care and subsequent dressing changes, along with pain control and fluid resuscitation. He tolerated this moderately well. It was noted that by the second postoperative day, areas long the medial aspect of the arm and lateral chest were beginning to appear to be full thickness. Nutrition consult was obtained to verify nutritional status. Their recommendations were followed in regard to supplemental dietary administration. The patient subsequently, on 4/14/2006, underwent debridement and split-thickness skin grafting of the left lateral flank with approximately 700 square centimeters total area grafted. With this having been accomplished, dressings were placed and he continued to do well until 4/18/2006 when he had dressings removed. There appeared to be very good graft take except for an area on the lower left lateral flank where there appeared to be a hematoma, which had extruded through the graft. This was redressed, as were the remainder of the burns, and on 4/19/2006, having determined that he had no way of obtaining care other than through the clinic, he was discharged with arrangements having been made to have him live at the hospitality house during

the remainder of his burn wound care. Having accomplished the discharge, he was discharged on OxyContin, Oxyir, and with instructions for daily dressing changes.

(b) An April 18, 2006 Medical Examination Report (FIA-49) was reviewed.

The physician provided the following current diagnosis: 12 percent total body square area burn with skin grafts.

The physician provided the following functional limitations: Claimant is able to lift 10 pounds occasionally. He is able to stand and/or walk for a total of two hours in an eight-hour day. Claimant is able to use his hands-arms and feet-legs normally.

(9) The probative medical evidence (standing alone) does not establish an acute psychiatric condition which, by itself, is expected to prevent claimant from performing customary work functions for the required period of time. There are no clinical psychiatric assessments in the record.

(10) The probative medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing customary work functions for the required period of time. The examining physician provided the following diagnosis: 12 percent total body square area burn with skin grafts. The physician reported that claimant is able to lift 10 pounds occasionally and can sit, stand or walk at least two hours in an eight-hour workday. He is able to use his hands/arms and feet/legs normally. The plastic surgeon's report, when taken in conjunction with the entire medical record, does not establish a severe physical impairment that would totally preclude substantial gainful activity.

(11) Claimant has applied for federal disability benefits; his application was denied in November, 2006. He has filed an appeal.

CONCLUSIONS OF LAW

Claimant's Position

Claimant thinks he is entitled to MA-P/retro/SDA based on the impairments listed in paragraph #4, above. The medical records provided by claimant verify the following physical diagnosis: Burns over 12 percent of claimant's body area, treated with grafting. There is no psychiatric/psychological examination in the record.

Department's Position

The department thinks that claimant can perform normal work activities. The medical evidence of record indicates that claimant's impairments have improved and are expected to continue to improve with medical compliance and do not prevent all work activities for 12 months from the date of onset or from the date of surgery.

The department denied claimant's MA-P application due to lack of duration under 20 CFR, Sec. 416.909. The department denied claimant's SDA application based on PEM 261.

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 (formerly known as the Family Independence Agency) 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 (formerly known as the Family Independence Agency) 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 Family Independence Agency 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 and 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, p. 34.

The vocational/medical/psychiatric 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.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means 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 based on his burn injury and subsequent skin-grafting surgery performed by a plastic surgeon. The Administrative Law Judge agrees.

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 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 manual laborer for a construction company.

The medical evidence of record establishes that claimant is not able to lift more than 10 pounds occasionally. This would preclude claimant from returning to his prior work as a construction laborer. Based on the medical evidence of record, claimant is not able to perform his previous work as a construction worker.

Therefore, claimant meets 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. 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 vocational/medical/psychiatric evidence establishes that claimant is able to perform light/sedentary work.

Light work may be defined as follows:

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Sedentary work may be 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).

Claimant's vocational profile shows a younger individual (age 45) with an eighth-grade education (special education) and history of unskilled work as a construction worker. The vocational/medical evidence of record, when taken as a whole, shows that claimant is able to perform substantial gainful activity (light/sedentary work). The vocational medical evidence substantiates the conclusion that claimant is able to work as a carry-out boy for a grocery store, as a ticket-taker at a theatre or as a parking-lot attendant.

During the hearing, claimant's representative testified that the major impairment to claimant's return to work was the pain he experiences due to the significant amount of skin grafting which has been performed on his burn sites. 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 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 skin grafting and the associated pain.

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 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.

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cc:

