

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: 2007-07905
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 14, 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 August 14, 2007. Claimant personally appeared and testified under oath.

Claimant was represented at the hearing by [REDACTED].

The department was represented by Alan Sage (FIM) and Mary Platsis (ES).

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 medicals by Record Close Date.

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 an MA-P/retro/SDA applicant (November 16, 2006) who was denied by SHRT (April 18, 2007) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.21, as a guide.

(2) Claimant filed a subsequent application on January 31, 2007, and submitted additional medical evidence. The January 31, 2007 application was combined with the November 16, 2006 application for hearing purposes. This Decision and Order governs both applications.

(3) Claimant's vocational factors are: age--45; education--high school diploma; post-high school education--courses at [REDACTED] on work-related topics; work experience--lawn care laborer, production work at a soffit factory, licensed fork truck driver, certified wire welder, and dairy farmer.

(4) Claimant has not performed Substantial Gainful Activity (SGA) since October 2006 when he worked as a lawn care laborer and lawn mower operator.

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

- (a) Back dysfunction/slipped disc;
- (b) Inability to sit for long periods;
- (c) Heart dysfunction;
- (d) Hypertension (HTN);
- (e) Anxiety disorder;
- (f) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (April 18, 2007):

Hospital records indicate claimant had a heart attack followed by angioplasty in 1/2006. After which he apparently did well until 10/2006 when he was having symptoms similar to those of 1/2006. A heart catheterization of 10/24/2006 indicated claimant had patent stent with mild to moderate left ventricular systolic dysfunction with no critical coronary lesions identified. (Pages 42-37)

Medical Examination Report of 11/2006 indicated claimant had normal findings on areas that were examined which included cardiovascular, respiratory, mental, and general. (Page 3)

ANALYSIS: Due to his heart condition, he should avoid heavy lifting and working around fumes.

* * *

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

- (8) Claimant has a valid driver's license and drives an automobile approximately 7 times a month. Claimant is not computer literate.

- (9) The following medical records are persuasive:

- (a) A July 26, 2007 Medical Examination Report (DHS-49) was reviewed.

The physician reported the following diagnosis:

- (1) Coronary artery disease;
- (2) Hypertension;
- (3) Bipolar depression;
- (4) Low back pain;
- (5) Anxiety disorder.

The physician provided the following work limitations: Claimant is able to lift up to 20 pounds frequently and up to 50 pounds occasionally. He is able to stand and/or walk less than 2 hours in an 8-hour day. He is able to sit less than 6 hours in an 8-hour day. Claimant is able to use his hands/arms normally. Claimant is able to use his feet/legs normally.

The physician reported no mental limitations.

- (b) A [REDACTED] form (DHS-1138) was reviewed.

The physician reports Functional Capacity as Class II--Patients with cardiac disease resulting in slight limitation of physical activity.

The physician reported the following Therapeutic Classification, Class C--Patients with a cardiac disease whose ordinary physical activity should be moderately restricted, and whose more strenuous efforts should be discontinued.

A December 6, 2006 medical report was reviewed.

The physician reported the following history: Patient recently was evaluated at [REDACTED] for chest pain. He continues to have some arm discomfort and he states he has difficulty sleeping.

His repeat coronary angiography showed all stents to be widely patent and no high grade obstructions. There was a 40% narrowing in the left anterior descending which was not felt to be likely to produce hemodynamic compromise.

He indicated he was at the [REDACTED] for an initial evaluation and he was told to discontinue his Atenolol at that time, because of an excessively low heart rate.

OBJECTIVE: Vital signs: Blood pressure 150/100, pulses 100, respirations 16, height 5' 7", weight 192 pounds. Neck veins are flat. Lungs are clear. Cardiac exam shows regular rhythm without gallops or murmurs. No extremity edema. The right groin showed no hematoma and good femoral and right foot pulse.

Of note, patient's left ventricular ejection fraction was estimated at 35-40 during recent angiogram.

The surgeon provided the following assessment:

- (1) The patient's cardiac status appears to be stable. He is still having some symptoms that are disproportionate to the catheterization findings. He may need a functional study such as a stress test. He probably should have an evaluation for alternative causes of his arm discomfort, possibly something in the cervical spine. He has indicated he will be seeing a cardiologist tomorrow at the [REDACTED], which is where he lives and will defer subsequent management to them.

* * *

(10) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from all performing customary work functions for the required period of time. There is no evidence in the record that claimant has been recently evaluated by a psychiatrist or a Ph.D. psychologist.

(11) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has the following diagnoses: coronary artery disease, hypertension, bipolar depression, low back pain, and anxiety disorder.

(12) Claimant's most prominent complaints are that he feels weak and has back pain. Claimant also feels depressed.

(13) Claimant has filed an application for federal disability benefits with the Social Security Administration. The Social Security Administration recently denied his claim for disability. Claimant has appealed.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized in the [REDACTED] hearing request as follows:

Claimant suffers from a longstanding history of coronary artery disease with history of myocardial infarction and stenting, as well as decreased ejection fraction of 35% - 40%.

DEPARTMENT'S POSITION

The department thinks claimant has the Residual Functional Capacity (RFC) to perform a wide range of unskilled work.

Based on claimant's vocational profile (younger individual (age 45) with a high school diploma and a history of unskilled work), the department denied claimant's MA-P application based on Med-Voc Rule 202.21, as a guide.

The department denied claimant's SDA application because the nature and severity of claimant's impairments do not preclude light, 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.

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 to result in death, it must have lasted or be expected to last for a continuous period of 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit his physical or mental ability to do basic work activities, claimant does not meet the Step 2 disability criteria. 20 CFR 416.920(c).

SHRT found that claimant meets the severity and duration requirements.

Claimant meets 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 listings.

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 lawn care laborer and lawnmower operator. Claimant's work as a lawn care laborer 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/vocational evidence of record establishes that claimant is not able to return to his previous work as a lawn care laborer. At the present time, claimant does not have the stamina to perform medium work for a continuous 8-hour shift.

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 medical evidence of record establishes that claimant is able to perform light/sedentary work. Claimant is able to perform work as a carry-out clerk at a grocery store, as a ticket taker for a theatre, as a pizza delivery driver, as a parking lot attendant, and as a greeter for [REDACTED].

During the hearing, claimant testified that the major impediment to his return to work was low back pain secondary to back dysfunction. 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 spinal dysfunction in combination with his pain. Claimant's cardiac problems are being managed satisfactorily by his physicians. Claimant has not established a severe mental impairment.

Also, claimant currently performs many activities of daily living, he drives an automobile and has an active social life. This would suggest that claimant is currently able to perform Substantial Gainful Activity.

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.

Claimant is not eligible for MA-P/SDA based on Step 5 of the sequential analysis procedure.

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 3, 2009

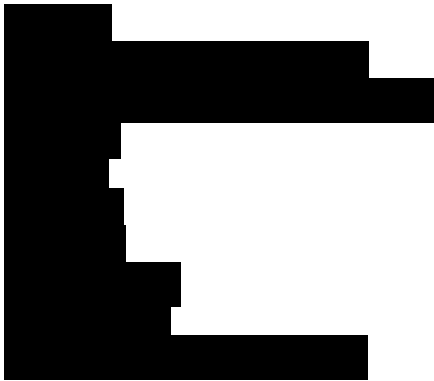
Date Mailed: August 4, 2009

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

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