

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: 2007-09524
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 17, 2007
Muskegon 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 July 17, 2007 in Muskegon. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Brenda Hodson (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to obtain an IQ test and to submit the new medical evidence to SHRT. The new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on August 17, 2007. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the ALJ issued the Decision below:

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 (October 24, 2006) who was denied by SHRT (May 30, 2007) due to claimant's ability to perform light work.

SHRT cited Med-Voc Rule 202.17 as a guide. Claimant requests retro MA for July and August 2006.

(2) Claimant's vocational factors are: age—43, education—8th grade (Special Education); post high school education—none; works experience—worked for a temporary agency doing production work and housekeeping at a long-term care facility.

(3) Claimant has not performed substantial, gainful activity (SGA) since June 2001 when he worked on a production line for a temporary services agency.

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

- (a) Back pain;
- (b) Chest pain;
- (c) Stomach pain;
- (d) Unable to read;
- (e) Unable to write (except for his name).

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

OBJECTIVE MEDICAL EVIDENCE (May 30, 2007):

Hospital records of 7/2006 indicate claimant was examined for chest pain, persistent fever with night sweats. Claimant had extensive hospital work-up and was found to have a somewhat normal physical exam with the exception of some tenderness to the

chest and spine. On lab studies, he was noted to have moderate evidence of mediastinal adenopathy, as well as abnormal liver functions, decreased hematocrit level, and low ejection fraction (from 33-41). Diagnosis given was fever of unknown ediology (thought to be from sarcoidosis). Pages 15, 17, 22, 31, 35, 42 and 51.

Medical examination report of 2/2007 indicated abnormal findings to be diminished, breath sounds, sinus, tachycardia, and mild hepatomegaly.

ANALYSIS: Claimant was hospitalized and treated to be diagnosed with unknown etiology. His biggest limitation may be fatigue. Claimant should be capable of at least light work.

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, light cleaning, grocery shopping (needs help). Claimant lives with his mother.
- (7) Claimant does not have a valid driver's license. He has taken the test three times, but is unable to pass it. Computer is not computer literate.
- (8) The following medical records are persuasive:
 - (a) A February 1, 2007 Medical Examination Report (DHS-49) was reviewed.
The physician provides diagnosis of pulmonary sarcoidosis. The physician reports the following work limitations. Claimant is able to lift ten pounds occasionally. He is able to stand/walk less than two hours in an eight-hour day and is able to sit about six hours in an eight-hour day. He is able to use his hands and arms normally and able to use his feet and legs normally.
 - (b) A [REDACTED] report was reviewed. The physician provided the following history:

This 42-year-old gentleman has a 1-year illness, characterized by fever, night sweats, modest weight loss, subcarinal pulmonary adenopathy, and hepatomegaly. In July of this year, his ACE level was increased. Bronchoscopy demonstated noncaseating granulomas on

biopsy. His chest/abdominal CT demonstrated the adenopathy, bibasilar pulmonary scarring and periaortic adenopathy. In July, the patient's alkaline phosphatase reached a high of 892, with a GGTP of nearly 700. His albumin was 2.1

The patient has been on Prednisone therapy for at least six months and is currently on a dose of 15mgs per day.

The patient indicates some continuing anorexia. His weight is 111 pounds, compared to his usual weight of about 115. He also complains of intermittent left precordial chest pain, lasting 15 to 20 minutes, and occasional low epigastric discomfort, often relieved to some degree by eating. He is followed by both myself and [REDACTED]. His last set of liver function studies reveals that the last three months did not change much, with a SGOT which is only minimally elevated, and an alkaline phosphatase which is about 1 ½ times normal.

Today in the office, this gentleman is afebrile.

(c) A [REDACTED] discharge summary was reviewed.

The physician provided the following discharge diagnosis:

- (1) Fever of unknown origin most likely secondary to sarcoidosis,
- (2) Chest pain
- (3) Low ejection fraction, compensated,
- (4) Elevated liver function test
- (5) COPD

(9) The probative medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The examining physician provided a diagnosis of pulmonary sarcoidosis. The [REDACTED] physician provided a diagnosis of COPD (Chronic Obstructive Pulmonary Disease). The DHS-49 report states that claimant can lift ten pounds

occasionally, stand/walk two hours and sit about six hours a day. He has complete use of his hands/arms and feet/legs. The medical reports, when taken in conjunction with the medical record as a whole, do not establish a severe physical impairment that would totally preclude substantial gainful activity.

(10) Claimant's most prominent complaint is pain in the abdomen area and fatigue.

(11) Claimant recently applied for Federal disability benefits; his application was denied by the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by his representative, [REDACTED] as follows:

Claimant was hospitalized in July 2006 for sarcoidosis. Claimant also suffers from COPD, anemia, back pain and hypertension.

DEPARTMENT'S POSITION

The department denied claimant's MA-P/SDA application based on claimant's ability to perform sedentary/light work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Administration listing.

The department thinks that medical evidence of record shows the claimant has the capacity to perform a wide range of light work.

Based on claimant's vocational profile (younger individual, age 43, 8th grade education, and history of unskilled medium work) the department denied claimant MA application based on Med-Voc Rule 202.17, as a guide. SDA was denied because claimant's medical impairments do not preclude 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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...[The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20

CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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

The vocational 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 totally precludes substantial employment. Duration means 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 Listings.

Therefore, the Administrative Law Judge concludes the 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 on an assembly line for a temporary services company.

The medical evidence of record establishes that claimant is able to perform sedentary/light work.

The Medical Examination Report (DHS-49) states that claimant can lift up to ten pounds occasionally. He is able to stand/walk less than two hours in an eight-hour day and able to sit about six hours in an eight-hour day. He has normal use of his hands and arms and normal use of his feet and legs.

Based on vocation/medical evidence of record, claimant is able to perform his previous work as an assembly line worker.

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, establishes that claimant is able to perform sedentary/light.

Claimant's vocational profile shows a younger individual (age 43, with an 8th grade Special Education), and a history of unskilled assembly line work. The vocational evidence of record, when taken as a whole, shows that claimant is able to perform substantial gainful activity. The medical/vocation evidence of record substantiates that claimant is able to work as a grocery store carry-out clerk, bank teller, ticket taker for a theatre, parking lot attendant, or as a greeter for



During the hearing, claimant testified that one of his major impediments to returning to work was his abdominal, chest and back pain. Evidence of pain, alone, is insufficient to establish disability.

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 the claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his body pain.

Claimant is able to perform some of his activities of daily living and the treatment he received in the hospital for his sarcoidosis has been successful. Although claimant does have some side effects from his sarcoidosis, the medical/vocational evidence of record shows that claimant has the residual functional capacity to perform light/sedentary work.

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, at this time for MA-P/SDA based on the sequential analysis in Steps 3, 4, and 5.

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: July 30, 2009

Date Mailed: July 30, 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/sd

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