

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: 2007-10451
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 10, 2007
Montcalm 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 on July 10, 2007 in Stanton. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED] from [REDACTED].

The department was represented by Richard Stilson (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 prior to 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)?
- (2) Did the department establish a severe physical impairment expected to preclude him from substantial gainful work on a sustained basis for one year (MA-P)?

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 applicant (August 8, 2006) who was denied by SHRT (May 11, 2007) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for July 2006.

(2) Claimant's vocational factors are: age—39; education—sixth grade; post high school education—none; work experience—laborer at a tree farm, forest work, cutting and stacking firewood, farm laborer.

(3) Claimant has not performed substantial gainful activity (SGA) since May 2006 when he worked as a laborer at the [REDACTED].

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

- (a) unable to read or write;
- (b) body hurts all over;
- (c) guts messed up;
- (d) unable to do physical labor;
- (e) only able to sleep four hours a day.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 11, 2007)

Claimant was intoxicated and had an ATV (all-terrain vehicle) accident in 7/2006 (page 23). He had facial fractures (page 20). Claimant is status post ORIF of the left distal radius fracture and left iliac wing fracture and fixation. He was to begin physical therapy and had limitations of lifting no more than five pounds in 8/2006 (page 12). Claimant's condition was improving.

ANALYSIS: Claimant sustained multiple injuries/fractures in 7/2006 as a result of an ATV accident. He was improving in 8/2006.

(6) Claimant is able to perform the following activities of daily living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, vacuuming, laundry, and grocery shopping. Claimant lives with his girlfriend and his two minor children, ages 8 and 10.

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

(8) The following medical records are persuasive:

(a) An August 14, 2006 Medical Needs form (DHS-54A) was reviewed. The physician provided the following diagnoses: (1) left iliac wing fracture; (2) left gluteal hematoma, (3) left distal radius fracture. The physician states that claimant will be unable to work from August through September 2006.

(b) An August 14, 2006 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: status post ORIF of left distal radius fracture and left iliac wing fracture fixation. The physician states that claimant is able to lift five pounds. There are no restrictions on standing, walking, or sitting. Claimant is able to do simple grasping. There are no limitations on his ability to use his feet/legs.

(c) A [REDACTED] Final Report was reviewed. The physician provided the following history: This is a 38-year-old Caucasian male transferred by [REDACTED] from [REDACTED] after a four-wheeler that he had been driving had gone off the road into the ditch. Apparently, the patient had some alcohol on board at the time of the accident. Loss of consciousness was unknown. ... He smokes about ½ pack of cigarettes a day. He drinks about 12 beers a day and occasionally uses marijuana. ... The patient is very intoxicated, therefore a review of systems is difficult to obtain.

The physician provided the following provisional diagnoses: (1) evaluation of trauma; (2) left forearm fracture; (3) intraabdominal lacerations; spleen laceration; liver laceration; (4) uteropelvic junction tear; (5) alcohol intoxication.

- (d) A July 3, 2006 medical report was reviewed. The physician provided the following history: This is a 38-year-old male status post ATV to tree. He does not remember the accident. He is a poor historian. Positive alcohol. Polytrauma. He was admitted for facial fractures. He denies diplopia, but complains of pain with closure of the jaw. He is also unable to open his mouth very wide. He denies sensory deficit. On CT there is a comminuted, displaced fracture of the right mandibular condyle head; subcondylar fracture left mandibular neck; nondisplaced left parasynphyseal fracture; minimally displaced fracture of the anterior left maxillary wall and comminuted nasal fracture mildly displaced.

The physician provided the following impression: I recommend a consult with oral surgery due to the poor dentition. He will require splinting, maxilla fixation and eventual nasal fracture reconstruction.

(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 psychiatric or psychological reports in the record.

(10) 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 the following diagnoses: status post ORIF of the left distal radius fracture and left iliac wing fracture and fixation. Other miscellaneous fractures. The physician states that claimant is able to lift five pounds occasionally and do simple grasping. No limitation on claimant's ability to stand, walk, or sit. No limitation on claimant's ability to use his feet/legs. However, claimant is unable to do pushing/pulling.

(11) Claimant's most prominent complaint is that his body hurts all over and his guts are messed up. He sleeps approximately four hours a day.

(12) SHRT reviewed claimant's supplemental medical evidence and reaffirmed its previous denial of MA-P.

(13) Claimant has applied for federal disability benefits; his application was recently denied by the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/retro based on the impairments listed in paragraph #4 above. The medical records provided by claimant verify the following diagnoses: status post ORIF of left distal radius fracture and left iliac wing fracture and fixation.

There are no psychiatric or psychological diagnoses in the record.

DEPARTMENT'S POSITION

The department thinks that claimant has a normal residual functional capacity. The department thinks that claimant's multiple injuries/fractures were successfully treated and that claimant is expected to improve within 12 months of the date of surgery.

The department denied MA-P due to lack of duration and severity. The department thinks that claimant is able to perform a wide range of work-related activities.

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).

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 purposes. PEM 260. "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 gainful activity (SGA). If claimant is working and is earning substantial income, he is not eligible for MA-P.

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 medical/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 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 the current medical records. 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 farmhand/laborer at a local tree farm. The medical evidence of record establishes that claimant is able to perform sedentary/light work. Recent medical evidence shows that claimant is able to lift five pounds frequently. There is no limit on his ability to sit, stand, or walk and no limit on his ability to use his feet/legs. Claimant does have some difficulty using his hands for fine manipulation. Based on the medical evidence of record, claimant is not able to perform his previous work as a farmhand/laborer at a tree farm because he is unable to lift the trees and planting equipment, as required.

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 evidence of record establishes that claimant is able to perform sedentary work. Claimant's vocational profile shows a younger individual (age 39), with a sixth grade education, who is unable to read and write. Claimant has a work history of working as a laborer and farmhand at a tree farm.

The medical/vocational evidence of record, when taken as a whole, shows that claimant is able to perform substantial gainful activity. The medical/vocational record substantiates the conclusion that claimant is able to work as a grocery store clerk at carry-out, as a security guard, ticket taker for a theatre, parking lot attendant, or as a greeter for [REDACTED].

During the hearing, claimant testified that the major impediment to his return to work was his all over body pain. Evidence of pain, alone, is insufficient to establish disability for MA-P 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 all over body pain. Claimant currently performs many activities of daily living and has an active social life. Claimant also supervises his two minor children who live with him. These activities taken collectively suggest that claimant has a residual functional capacity 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 disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby,
AFFIRMED. Claimant is not eligible for MA-P based on Step 5.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: July 27, 2009

Date Mailed: July 29, 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/pj

cc:

