

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: 2007-13920
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 18, 2007
Barry 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 18, 2007 in Hastings. Claimant personally appeared and testified under oath.

The department was represented by Debra Desrochers (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant did not submit his proposed evidence by the due date: July 18. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT.

ISSUE

(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/SDA applicant (December 18, 2006) who was denied by SHRT (June 21, 2007) due to claimant's ability to perform light work. SHRT cited Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—46, education—10th grade; post high school education—GED; works experience—used-car-lot helper and forklift salesman.

(3) Claimant has not performed substantial, gainful activity (SGA) since 2007 when he worked as a helper at a used car lot.

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

- (a) Depression;
- (b) Generalized back pain;
- (c) Takes meds for back pain;
- (d) Takes meds for depression;
- (e) Had a motor vehicle accident at age 18;
- (f) Steel fell on him at work;
- (g) Arthritis.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

Claimant had a laminectomy of L3 and L4 and fusion at L3-L4 on [REDACTED] (Page 9).

ANALYSIS: Claimant had a laminectomy and fusion in [REDACTED]. There is no medical information in the file since then, except a statement in [REDACTED] that claimant has a weight limit of 25 pounds (Page 14). Based solely on the medical information in the file, claimant will be limited to light work.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking. Claimant lives alone. A friend helps him with his daily chores.

(7) Claimant has a valid driver's license and drives an automobile approximately 8 times a month. Computer is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] surgical report was reviewed. The surgeon provided the following post operative diagnosis:

* * *

Spondylolisthesis at L4-L3 with stenosis.

The procedure was successful. No work limitations were noted.

(b) A [REDACTED] surgical report was reviewed. The physician provided the following post operative diagnosis:

Displaced L4 pedicle screw on the right.
Operative procedure: Re-direction of L4 pedicle screw on the right

(c) A [REDACTED] MRI report was reviewed. The radiologist provides the following summary:

Moderately advanced degenerative changes at L3-L4 with mild degenerative changes noted throughout the remainder.

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

(10) The probative medical evidence, standing alone, does establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The reporting surgeon notes that a laminectomy of L3 and L4 was performed on [REDACTED] and a redirection of the L4 pedicle screw was made on [REDACTED]. There are no medical reports describing limitations on claimant's ability to perform work functions in the record. The medical reports, when taken as a whole do not establish a severe physical impairment that would totally preclude substantial gainful activities.

(11) Claimant's most prominent complaint is the low back pain he experiences secondary to his spinal dysfunction.

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

(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/SDA based on the impairments listed in paragraph #4, above.

Medical records provided by claimant verify low back dysfunction and two back surgeries in [REDACTED].

There is no evidence of a mental impairment in this record.

DEPARTMENT'S POSITION

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

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

The medical evidence of record indicates that claimant has the capacity to perform simple, unskilled light work.

Based on claimant's vocational profile (younger individual, age 46) with a high school equivalent education and a history as a sales representative for a hi-lo company, claimant's application was denied based on Med-Voc Rule 202.20, as a guide.

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, 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 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 previous worked as a helper for a used-car-lot driving cars; he also worked as a sales representative for a forklift dealership.

There is no medical evidence of any work limitations in this record. However, taking the record as a whole, the claimant is able to perform light/sedentary work. He is able to use his hands and arms, as well as his feet and legs normally.

Based on the medical evidence of record, claimant is able to perform his previous work as a helper for a used car lot or as a sales representative.

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 *Dictionary of Occupational Titles* published by the US Department of Labor 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 46, with a GED education, and a history of semi-skilled work as a sales representative for a forklift company. The medical/vocational evidence substantiates that claimant is able to work as a grocery store carry-out assistant, security guard, ticket taker for a theatre, parking lot attendant or as a greeter at

██████████.

During the hearing, claimant testified that the major impediment to his return to work was his low back dysfunction in combination with his 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 spinal dysfunction in combination with his pain. Claimant currently performs many activities of daily living, drives his automobile approximately eight times a month, has a social life and drives a riding lawn mower to mow his lawn. The evidence suggests that claimant has the 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/SDA disability requirements under PEM 260 and 261.

Claimant is not eligible for MA-P/SDA at this time based on the sequential analysis presented above based on Step 5 of the sequential analysis presented above.

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: March 27, 2009

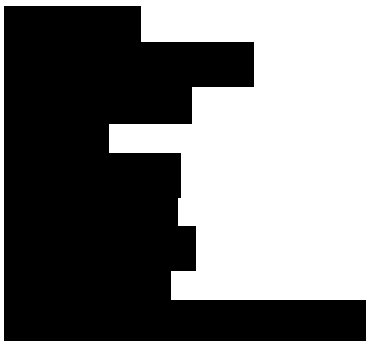
Date Mailed: March 30, 2009

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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