

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: 2007-18366
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 10, 2007
Roscommon 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 October 10, 2007 in Roscommon. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED],

[REDACTED] The department was represented by Margaret Beauregard (FIM).

Claimant requested additional time to submit new medical evidence. The new medical evidence was submitted to the State Hearing Review Team (SHRT) on October 18, 2007. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge made the following decision.

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 (October 4, 2006) who was denied by SHRT (September 6, 2007 and November 21, 2007 due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.13 as a guide. Claimant applied for retro MA-P for July, August, and September 2006.

(2) Claimant's vocational factors are: Age 51; education -- high-school diploma; post high-school education -- attended several college courses involving auto-mechanics and engineering; employment—master boat mechanic, auto service manager for auto dealership.

(3) Claimant has not performed substantial gainful activity (SGA) since 2006 when he worked at a power sports marina in [REDACTED] as a master mechanic for boats.

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

- (a) Vascular problems;
- (b) Vision problems;
- (c) Daily dizziness;
- (d) Carpal tunnel syndrome (bilateral);
- (e) Arthritis;
- (f) Sleep dysfunction;
- (g) Eating disorder; and
- (h) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (September 6, 2007)

In 2/2006, claimant's affect was constricted and mood was angry. He was paranoid and attempted to impress and intimidate. He was hyper-verbal and had fair eye contact (p. 79).

A letter dated 1/26/2007 indicated claimant had 90 percent left iliac stenosis and was treated with stents (p. 89).

On exam 2/23/2007, claimant was status post two-vessel coronary artery bypass surgeries in 4/2006 (p. 94). He was cooperative in answering questions and following demands. Claimant was 67" and 164 pounds. His blood pressure was 124/84. He had a 12" incision on his anterior chest-wall area. Breath sounds were clear. There was tenderness over the peri-incisional area. Heart revealed regular rate and rhythm without enlargement. There was normal S1 and S2. He had diminished pulsation with tear absent. The feet were warm and normal in color. There was no joint laxity, crepitus or effusion. Grip strength was intact. Dexterity was unimpaired (p. 93). Range of motion (ROM) was normal (pp. 91-92). Motor strength and tone were normal. Sensory was intact. Reflexes were intact and symmetrical. Gait was normal without the use of an assistive device. His chest pain appears to be more likely chest-wall origin. He denied any claudication (p. 91).

ANALYSIS: Claimant had 2X bypass surgery in 4/2006 and stenting of the left iliac in 1/2007. On exam, he denied any claudication and chest pain appeared to be more chest wall. He had normal ROM, normal strength and tone, normal sensation and normal reflexes. His gait was normal. Claimant has a history of mood and personality disorder, but would be able to do at least simple unskilled work.

* * *

- (6) Claimant performs the following activities of daily living (ADL's): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant lives with his elderly parents.

- (7) Claimant has a valid driver's license but does not drive. Claimant is computer literate, however, he finds it difficult to use a computer due to his vision dysfunction.

(8) The following medical records are persuasive:

(a) A [REDACTED] was reviewed. The Ph.D. psychologist provided the following history:

Claimant's complaints and symptoms involve his medical problems, a depressive disorder, a generalized anxiety disorder and a social anxiety disorder. When he was asked to describe his status, he said, 'Mentally I'm not willing to put up with people's attitudes. People have become pushy and demanding. I have been in my profession for 33 years and nobody can tell me about what I do. I am angry at people, but it depends on what they're doing.

My memory is extremely bad. My spelling, my vocabulary is almost non-existent. I have to carry a dictionary in my pocket.

I'm short-tempered. I'm down a lot. After listening to people's problems, now I don't have time for it. I'm a perfectionist. People who don't know what they're talking about make me angry. Going around the block instead of going right to the problem makes me angry.

Anytime I'm stressed out all the time. I'm tight and caged. Society asks more of me than I can give. I'm on edge. I don't know what my future is. I just lost my house, my dog. I've lost my income. I got behind in my house payments and the mortgage company took the house. I have an unknown future. I have medical side-effects from the surgery. I have light-headed problems. I'll be reading and I'll have a light switch go on and off with the light-headedness and I'll have to go lie down.

I'm depressed. I've got no motivation. I feel dead. I'm tired almost all the time. I feel worn out. I get up in the morning worn out. If I take a nap, I'm mad at myself because I wasted that time. I feel that life isn't worth living. When I'm in a store where there's lots of people I feel claustrophobic and anxious. I feel light-headed and warm. My heart pumps harder. My chest will be tired. It will be harder to breathe. I'll feel hot. My fingers will become numb and cold. My stomach will bother me more. I stay away from large groups of people. I only go to a

mall and get what I need and get right out of there. I don't like being around the people in there.'

* * *

The Ph.D. psychologist provided the following summary of the medical conditions:

Claimant cited the following medical problems:

- (1) I don't have a left eye. It's just a prosthesis.
- (2) I just had double-bypass surgery. They say I've got CAD. I also have peripheral vascular disease in my leg.
- (3) I have left inguinal hernia. I'm having surgery on next Monday.
- (4) I have a shattered right ankle from a motorcycle accident in 1976. I have a lot of arthritis it now.
- (5) The cartilage in my right knee is all ripped up and there is arthritis in it.
- (6) I have lumbar damage.
- (7) I have three ulcers. Two are in my stomach and one in my colon.
- (8) I get migraines. It's once a month or more depending on my stress level. I have constant ringing in my ears.

PERSONAL HISTORY:

* * *

I graduated from high school. I got B's and C's in high school. I went to [REDACTED] and [REDACTED] [REDACTED] e. I got good grades in college. I studied mechanical engineering.

I started working at [REDACTED]. I started out cleaning up and doing janitor work. I became a mechanic and then assistant service manager and then service manager by the age of 17. I worked for them for five years. I quit to take a job with [REDACTED]. I worked for them for 10 years. I got laid off from there in 1981. I moved here. I got called back to [REDACTED] and worked for a year-and-a-half to get my 10 years with them. I went to work for [REDACTED] as a mechanic and service manager. I was there for 15 years. I got tired of the owner's shit and left. I went to work for [REDACTED].

I worked for them for five years. I went back to [REDACTED] and worked with them for five years. Then I left that again and went to [REDACTED] as a security officer. I was with them for about a year-and-a-half. I then went back to being a mechanic for a marina for about five years. I left them due to my divorce and went to work for [REDACTED] as a mechanic. I was there for three years. I'm actually still there. That was my last job. I'm on sick leave from them now. April of this year was the last time I worked.

The Ph.D. psychologist provided the following diagnoses: Axis I -- major depression, single episode, moderate; generalized anxiety disorder; social anxiety disorder; rule out bipolar 1 disorder. Axis V/GAF -- 50.

- (b) An October 12, 2006 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses:

Legally blind -- retinal dysfunction, CAD, hypertension and depression.

The physician states that claimant has limited ability to work due to vision problems. He is able to lift up to 10 pounds occasionally. He is able to stand/walk less than two hours in an eight-hour day. He is able to sit about six hours in an eight-hour day. He is able to use his hands/arms normally. He is able to use his feet normally. He has no mental limitation.

- (c) An [REDACTED] was reviewed. The physician provided the following information:

* * *

Claimant is a 50-year-old male with a history photopsia, flashes and floaters in his right eye. The left eye has a prosthesis secondary to childhood glaucoma and subsequent loss of his eye.

IMPRESSION AND RECOMMENDATIONS: My impression is that claimant has photopsia with floaters, which could be an early sign of retinal tear or a subsequent retina detachment.

* * *

(9) The probative medical evidence, standing alone, does not establish an acute psychiatric/psychological condition expected to prevent claimant from performing customary work functions. The consulting psychologist provided the following diagnoses: Major depression, single episode, moderate; generalized anxiety disorder; social anxiety disorder; rule out bipolar 1 disorder. Claimant did not provide a DHS-49D or 49E to establish his mental residual functional capacity.

(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 medical record establishes the following diagnoses: Legally blind in left eye, retinal dysfunction in right eye, photopsia, hypertension, coronary artery disease and status post bypass surgery 2X. The DHS-49 physician states claimant can lift up to 10 pounds occasionally, sit/walk less than two hours in an eight-hour day, sit about six hours in an eight-hour day, use both of his hands and arms normally and use both of his legs normally. Claimant is unable to perform work that requires a high degree of visual acuity. The medical reports do not establish other any significant work limitations.

(11) Claimant's most prominent complaint is that he does not like being around people and he has side-effects from his recent heart surgery, including numbness and tingling in his legs and lack of energy/motivation.

(12) Claimant has applied for federal disability benefits. His application was recently denied by the Social Security Administration. He filed a timely appeal.

CONCLUSIONS OF LAW

Claimant's Position

Claimant thinks he is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above.

Department's Position

The department thinks that claimant has the residual functional capacity (RFC) to perform light work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The department thinks that the medical evidence shows claimant has the capacity to perform simple, unskilled, light work.

MA-P benefits were denied based on claimant's ability to perform unskilled light work. SDA benefits were denied due to claimant's failure to establish the required severity and duration.

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).

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 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 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.

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 meets the severity and duration requirements.

Claimant does 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 alleges that he meets the following listings: 4.12(b), 4.04(b), and 4.04(c).

SHRT decided that claimant does not meet the applicable Listing.

Claimant does not meet the Step 3 requirements.

Step 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a master mechanic for a marina repairing boats.

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

Since claimant's work as a marine mechanic required heavy lifting, climbing and other strenuous physical activities, he is not able to return to his previous job as a marine boat mechanic.

However, claimant also previously worked as a service manager for an automobile dealership. Claimant would be able to return to this work since it is not as physically demanding as being a marine mechanic.

Based on the medical evidence of record, claimant is able to perform his previous work as a service manager in an automobile dealership.

Claimant does not meet the Step 4 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/vocational evidence of record establishes that claimant is able to perform unskilled light work activities. Claimant's vocational profile shows an individual approaching advanced age (51), with a high-school education and several college level courses in automotive engineering. The medical/vocational evidence of record, when taken as a whole, shows that claimant is able to perform substantial gainful activity. The medical/vocational records indicate that claimant is able to work as a carry-out boy for a grocery store, as a security guard, as a ticket-taker for a theater, as a parking-lot attendant or as a greeter for [REDACTED].

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments, including coronary artery disease, hypertension, sleep dysfunction, memory dysfunction, anxiety and depression.

Claimant thinks that he is disabled based on Grid 4.04(b), 4.04(c) and 4.12(b). The Administrative Law Judge disagrees. SHRT decided claimant does not meet a listing. This means he can perform unskilled sedentary and light work. Claimant's application must be denied under Med-Voc Rule 202.13.

The department's decision is correct.

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 Step 5 of the sequential evaluation 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 10, 2009

Date Mailed: August 11, 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/jj

cc:

