

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: 2007-21120
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 7, 2007
Cheboygan 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 November 7, 2007 in Cheboygan. Claimant personally appeared and testified under oath.

The department was represented by Stephanie Neureither (ES). The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on August 14, 2009. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the Decision below.

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 applicant (January 19, 2007) who was denied by SHRT (October 5, 2007 and August 19, 2007) based on claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for October, November, and December 2006.

(2) Claimant's vocational factors are: age—47; education—12th grade (his reading skills are poor); post high school education—none; work experience—self-employed finish and rough carpenter, worked as an employees for builders as a rough and finish carpenter, worked as a self-employed subcontractor for builders as a rough and finish carpenter.

(3) Claimant is not currently performing substantial gainful activity.

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

- (a) pain in legs and feet;
- (b) status post three right knee surgeries;
- (c) scheduled right knee surgery;
- (d) needs back surgery;
- (e) poor bladder control;
- (f) lower body numbness;
- (g) pinched sciatic nerve.

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

OBJECTIVE MEDICAL EVIDENCE (OCTOBER 5, 2007)

Claimant accidentally cut himself on the right distal medial thigh with an ax on 1/28/2007. He went to ER and they cleaned and sutured it and gave him a tetanus shot (page 15). Claimant was admitted 2/6/2007 to 2/14/2007 due to septic arthritis of the right knee (page 149).

On 2/20/2007, claimant was seen for recurrent, presumed methicillin resistant staphylococcus aureus (MRSA), deep abscess of the right thigh in the suprapatellar region (page 14).

On 3/13/2007, claimant was seen in rehabilitation follow-up for worsening back pain and severe knee pain, arm pain, numbness, and parasthesia. On exam, he was 274 pounds. He had limited range of motion (ROM) of the lumbar spine. There was no paravertebral muscle asymmetry or atrophy. He had moderate point tenderness with palpitation of the lumbosacral paraspinals. Straight leg raise was negative bilaterally. There was no distal upper extremity joint crepitus, bony incongruity or trigger points. No dependent edema in the upper or lower extremities. Phalen's and Tinel's tests were positive bilaterally. He had persistent abductor pollicis brevis muscle atrophy, right greater than left. He had full upper extremity active ROM. He had distal right thigh swelling, although markedly diminished from that reported at his last visit. He had ongoing right knee swelling. There was no obvious joint instability. His hands remained callused. Speech was fluent, coherent, and comprehensible. He had persistently diminished light touch and pinprick sensation in the median sensory nerve distributions bilaterally. No obvious tone abnormalities/spasticity, static balance deficit or foot drop. His gait was significant for modest interval improvement, no longer requiring the use of a rolling walker. However, his gait remained antalgic with slowed cadence. Mood/affect was depressed, anxious, and frustrated (new information).

On 7/30/2007, claimant had arthroscopy surgery on the right knee (new information). On 8/7/2007, claimant was seen in follow-up of his diagnostic arthroscopy and debridement of suprapatellar scar. His knee was swollen. He had a lot of ecchymosis of the inner aspect of his thigh. He had negative Homan's. His range of motion (ROM) was from -10 to 90 degrees. His knee had quite a bit of arthritis in it but the doctor indicated he had debrided a very

dense suprapatellar up to normal appearing tissue so that should improve his ROM (new information).

ANALYSIS: Claimant accidentally cut his thigh with an ax in 1/2007. He ended up with an infection (possible MRSA) and septic arthritis in the knee. He eventually had arthroscopic surgery on the knee 7/30/2007. On follow-up 8/7/2007, his ROM was improving and he was expected to improve more. He had symptoms of carpal tunnel which was also expected to improve. He had back pain, but no significant neurological abnormalities related to the back. He did have some sensory changes in the hands/arms related to his carpal tunnel, but he also had calluses on his hands. Claimant's condition is not expected to prevent him from all types of work for 12 months in a row.

(6) Claimant performs the following activities of daily living (ADLs): dressing, bathing, cooking (sometimes), and grocery shopping. Claimant has a valid driver's license and drives an automobile approximately six times a month. Claimant is not computer literate.

(7) The medical evidence of record does not establish a severe mental impairment expected to prevent claimant from performing all substantial gainful work on a sustained basis. Claimant is not receiving any assistance from [REDACTED]. He is not being treated by a psychiatrist.

(a) A March 23, 2006 medical rehabilitation follow-up report was reviewed. The physiatrist provided the following information:

Chief complaint: Worsening distal bilateral upper extremity numbness, right greater than left, low back pain, bilateral lower limb radicular pain and perineal numbness.

INTRODUCTION: Claimant is seen in medical rehabilitation follow-up, on this date. Claimant is a very pleasant, 45-year-old right-handed white male who was in his usual state of health until 2000, who now presents with interval history significant for worsening "severe", "sharp", and "aching" low back pain, bilateral lower extremity,

“sharp” radicular pain, perineal numbness, and distal bilateral upper limb numbness, right greater than left.

Today, claimant indicates that he is now working in [REDACTED] and just off [REDACTED]. Marked increases in bilateral wrists, right greater than left, and low back symptomatology are reported. In fact, his right wrist “goes numb” at night while driving. Claimant states that he was seen by [REDACTED] a couple of weeks ago. Reportedly, [REDACTED] stated that he did not want to do the surgery. As on multiple prior visits, claimant again indicates that he ran out of medication early. Claimant now requests a medication refill of OxyContin stating that he “ran-out early” due to increased pain symptomatology. As well, he states that he feels that an increase in a.m. dosing of OxyContin would provide him for substantial benefit. He even offers to discontinue the use of both Norco and Actiq. Sleep remains non-restorative: three to four hours, continuous, maximum. Ongoing depression. However, [REDACTED] does not wish to take an antidepressant medication. No suicidal or homicidal ideation is reported. This visit, claimant reports a modest, interval increase in low back pain, but states that he is also experiencing increased bilateral knee pain—but is “just tolerating it.” Unfortunately, claimant once again reports that analgesic narcotic medication only prevents transient benefit. No additional problems described today.

V-A pain scale: Current 10/10, worst 10/10, and best 7/10.

The physiatrist provided the following assessment:

- (1) suspected lumbosacral stenosis;
- (2) lumbago/mechanical low back pain, chronic;
- (3) multi-level lumbosacral degenerative disc disease;
- (4) bilateral carpal tunnel syndrome, right greater than left;
- (5) left meralgia paresthetica;
- (6) chronic pain syndrome;
- (7) mood disorder: depression;
- (8) bilateral soft tissue hamstring contractures, chronic;
- (9) erectile dysfunction.

(8) The medical evidence of record does not establish a severe physical impairment expected to prevent claimant from performing any substantial gainful activity on a sustained basis. The medical record shows the claimant has had a significant number of surgeries on his right knee. He has also suffered from infection and carpal tunnel. However, the surgery has been successful, by and large.

(9) Claimant has applied for federal disability benefits. He was recently denied by the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has been successfully treated for his right knee dysfunction and for his carpal tunnel. The department denied claimant's application for MA-P based on his failure to establish an impairment that meets the severity and duration requirements.

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

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

If claimant does not have an impairment or combination of impairments which profoundly limit his ability to do basic work activities, claimant does not meet the Step 2 criteria.

The medical evidence of record shows that claimant does meet the Step 2 severity and duration requirements, at this time.

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 finish carpenter on a subcontractor basis for a local developer.

Claimant's work as a finish carpenter may be classified as medium work:

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 shows that claimant is not able to climb ladders and carry the amount of weight that he would normally be expected to carry while working as a finish carpenter.

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 vocational/vocational evidence of record, taken as a whole, establishes that claimant is able to perform sedentary/light work. Claimant's vocational profile shows a younger individual (age 47), with a 12th grade education (and third grade reading skills), and a history of skilled work as a finish carpenter.

Based on this analysis, claimant is able to work as a carry-out clerk at a grocery store, as a ticket taker for a theatre, as a parking lot attendant, or as a greeter for [REDACTED].

Based on this analysis of claimant's exertional/non-exertional impairments, the department correctly denied claimant's application for MA-P/SDA, due to claimant's ability to perform sedentary/light work.

During the hearing, claimant testified that the major impediment to his return to work was back and leg pain secondary to his spinal dysfunction. Evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his back and leg 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 and his pain. Claimant currently performs many activities of daily living, has an active social life, and drives an automobile approximately six times a month. The medical/vocational evidence, taken as a whole, shows the claimant is able to perform sedentary/light work.

Claimant does not qualify for MA-P/SDA benefits under Step 5 of the sequential analysis, as presented above.

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.

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: September 11, 2009

Date Mailed: September 14, 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

2007-21120/JWS

cc:

