

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: 2008-16362
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2008
Ingham 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 in Lansing on September 9, 2008. Claimant personally appeared and testified under oath.

The department was represented by Ellen Arman (lead worker).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for 90 days (SDA)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for 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 SDA applicant (September 5, 2007) who was denied by SHRT (May 21, 2008) due to claimant's ability to perform a wide range of medium work.

(2) Claimant's vocational factors are: age--38; education--11th grade, post-high school education--none; work experience--worked 18 years as an auto body repairman.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2006 when he worked at an auto body shop doing body work and paint work.

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

- (a) Status post broken collarbone (June 2006);
- (b) Status post collarbone repair (June 2008).

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

OBJECTIVE MEDICAL EVIDENCE (May 21, 2008)

An exam, dated 1/2008, showed claimant ambulated on his own without difficulty. He was 6' tall and 224 pounds. Blood pressure was 120/84. Lungs were clear and heart sounds were normal. He had some tenderness over the lower lumbar area and decreased Range of Motion (ROM). There was no Straight Leg Raise (SLR). He had an obvious deformity over the left mid-clavicle. There was no evidence of inflammation or tenderness in the joints and the ROM was within normal limits in all joints. Motor exam showed normal power and equal tone throughout. Sensory exam was within normal limits. Reflexes were 2+ and equal bilaterally. Gait was normal (page 4).

ANALYSIS:

Claimant sustained a clavicular fracture during an ATV accident in 6/2006. The fracture did not heal correctly. While he had a clear deformity in the mid-clavicle, his strength was basically within normal limits. There was no gross motor abnormality and ROM was within normal limits. He should avoid heavy lifting.

* * *

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, mopping (sometimes), vacuuming, laundry and grocery shopping. Claimant was hospitalized in June 2008 for collarbone surgery. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear a brace on his neck, arms or legs. He does wear a back brace, occasionally.

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

(8) The following medical records are persuasive:

(a) The SHRT summary of the medical evidence is provided at paragraph #5, above.

* * *

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not allege a mental impairment as the basis for his disability. There are no psychiatric/psychological reports in the record. Also, claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. A recent report by [REDACTED] states that claimant had a clavicular fracture which did not heal correctly. Claimant had open reduction-internal fixation (collarbone) in 2008. The Sparrow physician states that claimant has normal strength limits on his left side and does not have any gross motor abnormality. Claimant's range of motion in all his joints is within normal limits. The medical reports in the record do not show any significant functional limitations.

(11) Claimant recently for federal disability benefits with the Social Security Administration. Social Security denied his application; claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to 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 unskilled medium 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 claimant retains the residual functional capacity to perform a wide range of medium work. Based on claimant's vocational profile [younger individual (age 38) with an 11th grade education and a history of semi-skilled work as an auto body repairman], claimant is precluded from SDA disability based on Med-Voc Rule 203.28.

LEGAL BASE

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).

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 SDA purposes. PEM 261. "Disability," as defined by 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 SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working, or otherwise 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 test.

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/SDA, 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 physical/mental ability to do basic work activities, he does not meet the Step 2 criteria.

Because claimant recently had surgery on his collarbone, he meets the severity and duration test 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 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as an auto body repairman for approximately 18 years. This was medium work.

The medical evidence of record, in combination with claimant's testimony indicates that claimant is currently unable to return to his previous work as an auto body repairman, because he is unable to perform the required lifting and bending.

Since claimant is unable to return to his previous work, he meets the Step 4 disability test.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work.

Claimant has the burden of proof to show by the medical/psychological evidence in the record that his mental/physical impairments meet the department's definition of disability for SDA purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on his 2006 injury to his clavicle and back and his recent clavicle surgery (June 2008).

However, there is no medical evidence in the record to establish any permanent functional limitations due to claimant's clavicle injury. To the contrary, the [REDACTED] [REDACTED] physician states that although claimant does have a clear deformity in the mid-clavicle, his strength is within normal limits, there is no gross motor abnormality and claimant has normal range of motion in all of his joints.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his recent clavicle surgery. Claimant currently performs extensive activities of daily living and has an active social life. He is computer literate. He competently represented himself at the hearing.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary work (SGA). In this capacity, he is able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

Therefore, the department correctly denied claimant's SDA application based on 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 SDA disability requirements under PEM 261.

Accordingly, the department's denial of claimant's SDA application is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: January 8, 2010

Date Mailed: January 11, 2010

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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/cv

cc:

