

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: 2008-16503
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2008
Livingston 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, an in-person hearing was held on July 22, 2008, in Howell, Michigan. Claimant personally appeared and testified. Claimant was represented by [REDACTED].

The department was represented by Janet Shuster (community coordinator)

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was submitted to the State Hearing Review Team (SHRT) on July 23, 2008. Claimant waived the timeliness requirements so his new medical evidence can be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the following decision:

ISSUE

Did the department establish medical improvement that enables claimant to perform Substantial Gainful Activity (SGA) for SDA purposes?

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 a current SDA recipient. The department proposes to close the claimant's SDA based on medical improvement. SHRT issued a decision on May 23, 2008 stating that the medical records established medical improvements and claimant was no longer eligible for SDA based on his ability to work. The original SDA approval date is unknown. The basis for claimant's SDA disability approval apparently was claimant's back dysfunction; status post left shoulder fracture, seizure disorder, Hepatitis C, pancreatitis and low back pain.

(2) Claimant's vocational factors are: age—47; education—high school diploma; work experience—rough and finish carpenter for 26 years.

(3) Claimant has not performed Substantial Gainful Activity (SDA) since 2002 when he was employed as a carpenter, and fell from a ladder.

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

OBJECTIVE MEDICAL EVIDENCE (May 23, 2008)

Information of record from 1/2008 reported treatment procedures and chest pain. Claimant is non-compliant and chooses not to take the Dilantin medication. Blood alcohol levels were excessively high. The chest pain was not of ischemic origin. The chest x-ray showed a normal heart size and clear lungs.

On physical examination, gait was normal. Heel and toe walk were done without difficulty. The left shoulder scar was well-healed. Strength was classified with all the muscle groups in the upper and lower extremities. Sensation was intact bilaterally. Deep tendon reflexes were normal. Range of motion of the neck and back were decreased. There was no paraspinal muscle tenderness or spasm. Gait was normal. Upper extremity use was normal (page 138, 142, 143, 150, 14, and 43).

ANALYSIS

The claimant's impairments have improved and can be medically managed with compliance of treatment when severe impairment was not clinically documented.

* * *

- (5) The following objective medical evidence was considered:
- (a) On December 7, 2007, orthopedic specialist's note was reviewed.

The orthopedic surgeon provided the following diagnosis:
left shoulder clavicle fracture.
 - (b) An August 24, 2006 radiology exam report was reviewed. The radiologist provided the following impression:

Mild-moderate lumbar spondylolysis, greatest in L4-L5 and, to a lesser degree in L3-L4, without central canal stenosis.

Mild-moderate lumbar facet arthropathy contributes to narrow foraminal stenosis.

Mild discogenic degenerative changes are seen within the lumbar vertebral cuff.
 - (c) A June 12, 2008 Medical Examination Report (DHS-49) was reviewed.
 - (d) The physician provided the following diagnoses:

Chronic back pain, chronic pancreatitis, seizure disorder, chronic Hepatitis C.
 - (e) The physician provided the following physical limitations:

Claimant is able to lift less than ten pounds occasionally. He is able to stand/walk less than two hours in an 8-hour workday. The claimant was unable to do simple reaching, pushing-pulling and fine manipulating with his hands/arms. He is unable to use either foot to operate foot/leg controls.

Under mental limitations, the physician notes limitations as follows: memory; sustained concentration; following simple directions.

- (f) An [REDACTED] [REDACTED] narrative report was reviewed. The physician provided the following history:

Claimant is a 45-year-old white male referred by the Family Independence Agency for an evaluation. Claimant complains of pain in his lower back, which has been bothering him for a long time, but he states that he was being evaluated and was being seen by [REDACTED]. Subsequently, due to insurance reasons, he was asked to change his physician and technically he was referred to a neurologist who ordered an MRI of the neck and back. The neck did not show significant disc herniation but moderately severe central canal stenosis. Claimant subsequently underwent anterior cervical fusion by [REDACTED]. He was in a hard collar, until several weeks ago and then he was placed in a soft collar, and now he is off the collar. He is undergoing physical therapy, at the present time because of significantly restricted movement in his neck. He still continues to have significant pain in his lower back for which he is on morphine sulfate, as well as Vicodin. He was also diagnosed with Hepatitis C and is in the process of seeing a gastroenterologist and presumably seems to be scheduled to have a liver biopsy. He denies any complaints of chest pain. He denies any shortness of breath. He denies any palpitations. He denies any headache but he does complain of some discomfort in the neck, more so with any movement. He does state he has a history of possible seizures. He goes into these episodes where he loses consciousness and has some movement. At one time, his mom was a witness to it, but most of the time when this happens, no one has witnessed it. He is following up with [REDACTED] who is a neurologist. He also states that with these episodes one time, he fell in his garage and was subsequently admitted in the hospital and had some right-sided numbness and weakness. He also states that he has lost a significant amount of weight, about 35-40 pounds over the last year, which he attributes to all his problems, including Hepatitis C, as well as his back discomfort. He has not been able to work for the last couple of years because of that, he used to work as a construction worker.

* * *

IMPRESSION

Status post anterior cervical fusion secondary to a large disc herniation and moderately severe in central canal stenosis. Chronic low back pain with lumbar spondylitis. History of Hepatitis C. History of weight loss. Elevated liver enzymes. Elevated blood sugar.

TREATMENT

* * *

At this time, I do not feel that he is capable of any productive work.

(6) The objective medical evidence from claimant's testimony shows that claimant has had several seizures in 2008. As a result of the seizures, claimant has fallen and further injured his extremities.

CONCLUSIONS OF LAW

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 does 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).

Ability to do Substantial Gainful Activity (SGA)

Under current SDA policy, **the department has the burden of proof** to establish that claimant is not medically able to return to work. PEM 261.

Claimant's original approval appears to have been based on his spinal dysfunction, in combination with his Hepatitis C, his pancreatitis and his seizure disorder. It appears that claimant's chronic low back pain was also a consideration in his previous SDA approval.

Claimant's physical condition has not improved since the last review.

Claimant's seizure disorder is still causing frequent falls and injury to claimant's extremities. Claimant's Hepatitis C has not improved. Claimant's neck pain, secondary to his back dysfunction has not improved.

Claimant's testimony indicates that these conditions individually and in combination, have continued to deteriorate and make it very difficult for him to perform activities of daily living and work activities.

Since claimant was apparently approved for SDA based on the combination of his spinal dysfunction, seizure disorder, pancreatitis, Hepatitis C, he continues to be eligible based on the combination of those diagnoses. Claimant continues to have back pain and neck dysfunction. In

combination of claimant's impairments continue to interfere with claimant's activities of daily living and with claimant's ability to obtain a new job.

Therefore, claimant is not, at this time, able to return to Substantial Gainful Activity (SGA) based on the combination of his impairments (exertional).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has **not** established the required medical improvement, as required by PEM 261.

Accordingly, the department's decision to close claimant's SDA is, hereby, REVERSED.

The department shall obtain a current physical exam and review claimant's ongoing SDA eligibility in September 2010.

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.

2008-16503/jws

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/tg

cc:

