

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: 2008-20658
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 18, 2008
Oakland 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 hearing was held in Pontiac on September 18, 2008. Claimant personally appeared and testified under oath.

Claimant was represented at the hearing by [REDACTED].

The department was represented by Janet Puumala (FIM) and Lisa Propes (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 17, 2009. 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 issued the decision below.

ISSUE

(1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?

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 applicant (December 11, 2007) who was denied by SHRT (June 30, 2008) due to claimant's ability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.17 as a guide.

(2) Claimant's vocational factors are: age—41; education—11th grade, post-high school education—none; work experience—trimmer and laborer for a tree service, material handler, factory laborer and carpenter.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006, when he was a tree trimmer and laborer.

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

- (a) Bilateral carpal tunnel syndrome;
- (b) Ruptured disc;
- (c) Wears TENS unit.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 30, 2008)

Treatment note of 12/2007 reported claimant to have normal gait, his extremities all move normally. Sitting and standing were normal. Muscle tone was normal and there was no atrophy present. (Page 62).

Consultative examination of 3/8/2008 indicated claimant to have low back pain and complaints of carpal tunnel syndrome. He was noted to be wearing splints on both hands. His neck was noted to be tender. The left hand has some weakness (3/5) with evidence of some atrophy. He walked with a limp, but his gait was steady. He could not perform heel/toe walking and he was unable to squat. (Page 10).

ANALYSIS: Claimant's condition would make heavy lifting difficult. Due to carpal tunnel syndrome, he should avoid constant gripping and working with laboratory tools. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

* * *

(6) Claimant lives with his girlfriend and performs the following Activities of Daily Living (ADLs): dressing, bathing, dishwashing (sometimes), light cleaning (sometimes), grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. He wears braces on both his arms. He wears a back brace daily. Claimant was hospitalized in February 2008 for left hand cellulites.

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

(8) The following medical/psychological records are persuasive:

(a) A [REDACTED] narrative report was reviewed. The internist provided the following summary:

This is a 40-year-old gentleman who presents to the clinic with multiple problems stemming from the fact that he was involved in a motor vehicle accident in December 2006. He was a pedestrian riding a bicycle and was hit by a truck and trailer. He was thrown over the bicycle and landed on the street. He was hit on the right side and landed on his left side. He landed, apparently, on his outstretched arms. He was initially evaluated at the hospital and released. He has no fractures or other abnormalities on a CT scan, but he continued to have back and leg pains and also pain in both

of his hands which were numb and painful. Evaluation had shown that he had Carpal Tunnel Syndrome findings involving both hands which were present on EMG and nerve conduction studies. Currently, he is wearing a splint in both of his hands and wrists and also a back brace. He continues to have pain in his lower back with radiation down lower extremities with typical exacerbations on bending or lifting or prolonged standing or walking. Cold and damp weather exacerbates the symptoms, but he gets relief with heat. Examination does reveal tenderness and diminished range of motion of the lumbosacral spine with paravertebral muscle spasms but SLR tests were negative. He also was noted to have difficulty with range of motion of his hands. Patient is right handed. He has markedly diminished power with wasting of the muscles in his left hand and is unable to make a complete fist with his left hand. Recently he had suffered cellulites of his left hand secondary to a grease burn which had to be treated with IV antibiotics. Currently he is on oral antibiotics and the burn seems to be healing well. He was also noted to be walking with a limp and there is a history that his right leg had given out on him a few times and he had fallen because of that. He needs definite follow up with his primary care physician as well as by an orthopedist and/or a podiatrist for his various problems involving his back and extremities. A hand surgeon may be able to provide him with corrective treatment for his carpal tunnel syndrome. Physical therapy and any referral to any specialties would help with any further evaluation and treatment options.

* * *

(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 does not allege disability based on a mental impairment. There are no psychiatric/psychological reports in the record.

(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. Claimant thinks he is unable to work because of bilateral carpal tunnel

and low back pain. The consultative narrative examination (March 8, 2008) provided the following diagnoses:

- (1) Degenerative joint disease involving the lumbosacral spine;
- (2) Lumbar radiculopathy bilateral;
- (3) Carpal Tunnel Syndrome bilateral with wasting left hand/arm muscles;
- (4) Cellulites of the left hand-healing on antibiotics;
- (5) Pain in all joints with secondary functional impairment.

The consulting internist did not report that claimant has an ability to perform substantial gainful activity.

(11) Claimant recently applied 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 MA-P 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 light work.

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

Based on claimant's vocational profile [younger individual (age 41), with an 11th grade education and a history of unskilled work], the department denied MA-P based on Med-Voc Rule 202.17 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).

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 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.

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 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 existed 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.

The severity/duration requirement is *de minimus* requirement. Therefore, claimant meets the severity and duration requirements of Step 2. However, in order to determine claimant's eligibility for MA-P, the following steps must be considered.

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.

The following Listings were considered. 1.05 (Back dysfunction with pain). 1.02 (Carpel Tunnel).

Claimant's medical evidence of record does not establish disability based on the Listings at this time.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a tree trimmer and tree service laborer. This work is heavy work. Claimant's work as a tree trimmer and tree trimmer laborer requires extensive use of both upper extremities, coupled with the ability to lift large amounts of weight (50 pounds or more).

Due to claimant's bilateral carpal tunnel syndrome coupled with his back dysfunction, he is not longer able to perform his previous work.

Since claimant is unable to perform his previous work as a tree trimmer and tree service laborer, 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 MA-P purposes.

First, claimant does not allege disability based on a mental disorder. Also, there is no psychological/psychiatric evidence in this record to establish a severe mental impairment.

Second, claimant alleges disability based on back dysfunction with radiating pain and bilateral carpal tunnel syndrome. Claimant's back dysfunction prevents him from performing medium work. It does not prevent him from performing sedentary work. Claimant's carpal tunnel prevents him from performing activities that require constant use of hands and arms. Based on claimant's carpal tunnel syndrome, he should avoid constant gripping and working with vibratory tools.

During the hearing, claimant testified that a major impediment to his return to work was his back pain secondary to his spinal dysfunction. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is profound and 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, radiating pain and bilateral carpal tunnel. Claimant currently performs many Activities of Daily Living, has an active social life with his grandchild and his live-in partner. 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 physically able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter for [REDACTED]

Based on this analysis, the department correctly denied claimant's MA-P 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 MA-P disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: March 3, 2010

Date Mailed: March 4, 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 receipt date of the rehearing decision.

JWS/sd

cc:

