

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: 2008-21910
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 27, 2008
Lapeer 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 in Lapeer on August 27, 2008. Claimant personally appeared and testified under oath.

The department was represented by Patricia Bentley (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. The record was closed and the new medical evidence was sent to SHRT for review on August 27, 2008.

Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After a second SHRT disability-denial, the Administrative Law Judge issued the Decision and Order below.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, 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, **continuously**, 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/SDA applicant (February 21, 2008) who was denied by SHRT (June 26, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for November and December 2007 and January 2008.

(2) Claimant's vocational factors are: age--45; education--high school diploma, post-high school education--3 semesters at [REDACTED] (major--land surveyor); work experience--a certified auto mechanic (20 years).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since May 2001 when he worked as a certified auto mechanic for a transmission shop.

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

- (a) Status post back surgery (January 2008);
- (b) Status post varicose vein surgery/left leg (June 2008);
- (c) Nerve dysfunction in bilateral wrists;
- (d) Neck/back dysfunction with pain.

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

OBJECTIVE MEDICAL EVIDENCE (June 26, 2008)

In 1/2008, claimant underwent a laminectomy and fusion at the L4-5 levels (page 207).

A DHS-49 form, dated 3/2008, showed claimant had varicose veins and MRSA. He had mild wheezing, but quit smoking 1/7/2008. He had back pain, but was recovering from surgery.

There were no neurological abnormalities (page 216). The doctor indicated claimant was disabled for 12-18 months (page 215).

Another DHS-49 form completed by the neurosurgeon indicated claimant had spinal stenosis. He still walked with unsteadiness and had pain in the lumbar spine (page 228). The doctor indicated claimant could occasionally lift 10 pounds and stand and/or walk less than 2 hours. However, claimant did not medically require an assistive device for ambulation (page 227).

ANALYSIS:

Claimant underwent a laminectomy and fusion at the L4-L5 level in 1/2008. There was no evidence of significant neurological abnormalities following the surgery. Claimant would not be limited from all types of work for 12 months in a row following this surgery.

* * *

(6) Claimant lives with his 15-year-old son and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing (needs help), and cooking (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear a brace on his neck, arms or legs. Claimant does wear support stockings on his legs and a back brace. Claimant was hospitalized in February 2008 for treatment of a skin infection related to his back surgery.

(7) Claimant has a valid driver's license and drives an automobile approximately 4 times a month. Claimant is computer literate.

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

(a) An August 7, 2008 Medical Examination Report (DHS-49) was reviewed. The orthopedic surgeon provided the following current diagnoses:

Left L4-L5 disc displacement and incapacitating pain.

The surgeon reported the following physical limitations: Claimant is able to lift less than 10 pounds occasionally. He is able to stand/walk less than 2 hours in an 8-hour day.

There are no assistive devices medically required. Claimant is totally unable to use his hands/arms. He is totally unable to use his feet/legs.

The orthopedic surgeon provided the following findings in support of the physical limitations reported:

The patient is status-post lumbar surgery January 8, 2008. The healing time for the surgery he had is typically 8-12 months.

* * *

Note: Claimant's treating orthopedic surgeon has given less than sedentary work restrictions, based on claimant's physical impairments (January 2008 back surgery). However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence.

- (b) A May 2, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnoses:

Spinal stenosis.

The physician provided the following physical limitations:

Claimant is able to lift 10 pounds frequently and 10 pounds occasionally. Claimant is able to stand/walk less than 2 hours in an 8-hour day.

No assistive devices are medically required. No limitations on claimant's use of his hands/arms or feet/legs were indicated.

* * *

- (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. 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. While it is true that claimant's treating physician reports that he is totally unable to work, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record. It is also contradicted by claimant's testimony at the hearing.

(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/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 sedentary 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 of record shows claimant's condition is improving, or is expected to improve within 12 months from the date of onset or the date of his surgery.

The department denied MA-P/SDA because claimant's back impairments do not meet the department's severity/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).

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 MA-P/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/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 MA-P/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.

Claimant meets the severity and duration disability test.

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 a mechanic for a transmission shop. This was medium work.

Claimant's physician has put him on a "no work" status for 12 to 18 months.

Claimant is not able to return to his previous work as a mechanic, therefore 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/SDA purposes.

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

Second, claimant alleges disability based on his varicose vein surgery and his back surgery. The only evidence in support of claimant's claim of total disability is supplied by his treating physician. However, this Medical Source Opinion (MSO) cannot be given controlling weight because it is contrary to the great weight of the medical evidence in the record (See citation above).

During the hearing, claimant testified that a major impediment to his return to work was the back/leg pain secondary to his back dysfunction. Unfortunately, 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 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 back dysfunction and his varicose vein condition. Claimant currently performs several activities of daily living, with the help of his son, and has an active social life with his son. Claimant is computer literate and drives an automobile four times per month. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform 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].

The department correctly denied claimant's MA-P/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 MA-P/SDA disability requirements under PEM 260/261.

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: January 5, 2010

Date Mailed: January 6, 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:

