

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: 2008-31554
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 3, 2009
Oscoda 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 Mio on March 3, 2009. Claimant personally appeared and testified under oath.

The department was represented by Kim Wright (FIM) and Bonnie Ewald (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mail to the State Hearing Review Team (SHRT) on March 10, 2009. Claimant waived the timeliness requirement 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 the department provide probative psychiatric evidence to show marked improvement in claimant's mental impairment, to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

(2) Did the department provide probative medical evidence to show marked improvement in claimant's physical impairments, to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

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 recipient who had an eligibility review in December 2007. The department decided to close claimant's SDA case due to medical improvement. Based on claimant's timely hearing request, he is currently receiving SDA benefits.

(2) On December 26, 2007, MRT denied SDA due to claimant's ability to perform Substantial Gainful Activity.

(3) The local office notified claimant that MRT had denied ongoing SDA benefits.

(4) On August 18, 2008, claimant filed a timely hearing request. The local office deleted the proposed negative action on claimant's SDA. Claimant is currently receiving SDA.

(5) On October 2, 2008, SHRT denied claimant's review application for SDA for the following reasons:

The medical evidence of record indicates that claimant's condition had improved since the SDA benefits were approved. His condition was continuing to improve, and was not expected to prevent all types of work activity for 12 months in a row.

* * *

SDA is denied per PEM 261 as the impairments would no longer preclude all work for 90 days.

* * *

(6) Claimant's vocational factors are: age--44; education--high school diploma, post-high school education--none; work experience--welder for [REDACTED] for 24 years.

(7) Claimant has not performed Substantial Gainful Activity (SGA) since 2006, when he worked as a welder for [REDACTED].

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

- (a) Unable to sit for an extended time;
- (b) Unable to bend for an extended time;
- (c) Unable to lift for an extended time;
- (d) Unable to bend for an extended time;
- (e) Status post back surgery (March 2007).

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

OBJECTIVE MEDICAL EVIDENCE (October 2, 2008)

Claimant underwent lumbar decompression and fusion on 3/16/2007 (page 133).

In 9/2007, claimant was noted to be doing well. He was approximately six months out from having undergone a posterior lumbar decompression and fusion. He had a little bit of weakness in his back when his brace was off. His legs were feeling fine. Plane x-ray shows stable fusion. He was able to start physical therapy and to gradually build up the strength in his back (page 151).

ANALYSIS: Claimant was approved SDA benefits in 5/2007, following his lumbar decompression and fusion in 3/2007. In 9/2007, x-rays showed stable fusion. He was doing well. Claimant's condition was improving and was not expected to prevent all types of work for 12 months in a row.

* * *

(10) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, and grocery shopping. Claimant uses a cane approximately 15 times a month. He uses a walker 3-4 times a month. He uses a shower stool on a daily basis. He does not use a wheelchair and he does not wear braces. Claimant did not receive any in-patient hospital services in 2008 or 2009.

(11) Claimant has a valid driver's license and drives an automobile approximately six times a month. Claimant is not computer literate.

(12) The following medical records are persuasive:

- (a) A January 22, 2009 Medical Examination Report (DHS-49) was reviewed. The treating physician provided the following diagnoses: chronic back pain, Degenerative Joint Disease (DJD) and Degenerative Disc Disease (DDD) of the cervical thoracic and lumbar spine. Neuropathy of the upper and lower extremities.

The treating physician provided the following physical limitations: Claimant is unable to lift any amount. He is able to stand/walk less than 2 hours in an 8-hour day. He is not able to use his hands for simple grasping, reaching, pushing-pulling or fine manipulating. He is able to use his legs to operate foot controls.

- (b) A January 8, 2009 Medical Needs form (DHS-54A) was reviewed. The treating physician states that claimant will need medical treatment for a lifetime and states that claimant is totally unable to perform any work, including his usual occupation or any other occupation. These limitations are specified as 'lifetime.'

* * *

(13) There is no probative psychiatric evidence in the record to 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.

(14) The probative medical evidence does establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The January 22, 2009 Medical Examination Report by claimant's treating gerontologist states the following diagnoses: chronic back pain, DJD and DDD of the cervical, thoracic and lumbar spine with neuropathy of upper and lower extremities.

(15) Claimant recently applied for federal disability benefits with the Social Security Administration. His application is currently pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to a continuation of his SDA benefits based on the impairments listed in paragraph #4, above.

In particular, claimant thinks that he has a severe physical impairment (DJD and DDD of the cervical, thoracic and lumbar spine including neuropathy of the upper and lower extremities).

DEPARTMENT'S POSITION

The department decided that claimant does not meet the requirements for ongoing SDA benefits because his back impairment (posterior lumbar decompression and fusion) was successful and claimant is gradually building up his strength in his back.

The department did not review claimant's SDA eligibility using the applicable SSA improvement rules.

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).

The department has the burden of proof to show by a preponderance of the medical evidence in the record that claimant's physical impairments have improved to the extent that claimant is now able to perform Substantial Gainful Activity. 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 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 the department has established improvement in claimant's physical impairments to the degree that he is now able to perform Substantial Gainful Activity.

The department has the burden of proof to show that claimant's physical impairments have substantially improved to the point where claimant can now perform basic work activities.

PHYSICAL IMPAIRMENTS: The medical evidence of record, Medical Examination Report (DHS-49), dated January 22, 2009, establishes that claimant still has significant impairments which preclude Substantial Gainful Activity. These impairments include chronic back pain; DJD and DDD of the cervical thoracic and lumbar spine; neuropathy of the upper and lower extremities. Claimant also has significant back pain.

In short, the department has not shown that claimant's physical impairments have improved to the point where claimant is now able to perform Substantial Gainful Activity.

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 marked improvement in claimant's physical impairments to the extent that he is now able to perform Substantial Gainful Activity under PEM 261.

Accordingly, the department's denial of claimant's SDA eligibility review is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: July 8, 2009

Date Mailed: July 9, 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 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:

