

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: 2008-12356
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 2, 2008
Kalamazoo 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 2, 2008, in Kalamazoo. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Sandy Lemley (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was submitted to State Hearing Review Team (SHRT) on August 13, 2008. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial (August 19, 2008). The Administrative Law Judge issued the decision 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/retro/SDA applicant (July 31, 2007) who was denied by SHRT (April 7 and August 19, 2008) based on claimant's ability to perform past work. 20 CFR 416.920(e). Claimant requests retro MA for April, May and June 2007. **The disputed eligibility period is April 2007 to August 2, 2008.**

(2) Claimant's vocational factors are: age—55; education—high school diploma; post high school education--courses at junior college ([REDACTED] major); work experience--tire technician, auto mechanic (not certified) and maintenance manager for a factory.

(3) Claimant has not performed substantial gainful activity (SGA) since 2005 when he was a tire technician.

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

- (a) Chronic fatigue;
- (b) Sleep dysfunction;
- (c) Shortness of breath;
- (d) Needs frequent rest periods;
- (e) Rectal bleeding.

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

OBJECTIVE MEDICAL EVIDENCE (August 19, 2008):

This claimant was returned to the State Hearing Review Team by Administrative Hearings with newly submitted medical evidence and correspondence.

Claimant's work experience includes maintenance manager, stock person and mechanic. The maintenance manager is considered light work (as performed in the national economy).

Claimant alleges disability due to pulmonary artery disease, shortness of breath, Hepatitis C and rectal bleeding.

The claimant was denied by the Medical Review Team April 2008.

Applicable SSI listings considered: 4.01; 3.01 and 5.01. SHRT denied benefits based on claimant's ability to perform his past work (20 CFR 416.920(e)).

SHRT provided the following comments:

Claimant retains the residual functional capacity to perform light work. Claimant's past work was light. Claimant retains the capacity to return to his past relevant work.

* * *

Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces.

Claimant received in-patient hospital care at [REDACTED] in [REDACTED] for treatment of a heart attack and placement of a stent.

(7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

A [REDACTED] physical examination report was reviewed.

The DDS internist provided the following chief complaints: heart attack, stent placement, jaundice, Hepatitis C, fatigue.

Claimant has a history of coronary artery disease since 2002. He states he has had two infarctions. He was at home in 2002 when he developed chest pain and syncope and a second one was in 2004 when he was at work. He did undergo a heart catheterization and angioplasty in 2002 and in 2004. His last stress test was in 2006,

which was normal. He is currently on Plavix and Metoprolol and Albuterol, as needed. He does complain of occasional chest discomfort that lasts one to two times per week to one to two times per month and his last event was two weeks ago. It is substernal in location with radiation to the left arm. He describes it as a dull ache without any precipitating factors or associated symptoms.

Claimant was also diagnosed with Hepatitis C, about three years ago when he presented with jaundice. He states he was feeling fatigued and flu like. He states that his last blood work was one month ago, but does not note what it shows. He has never had a liver biopsy or intervention.

Claimant has not worked since 2005. He used to work at the [REDACTED] and stopped because of his acute jaundice and coronary disease. He now lives with his mother whom he cares for due to her being elderly at 87 years old. He runs errands for her and does her grocery shopping. He enjoys reading, doing puzzles, watching TV. He states he tried bicycling and he states he was able to tolerate it. He states he can walk around [REDACTED]. He denies any problems sitting. He does not know how long he can stand, but he mostly lies down.

* * *

The consulting internist provided the following conclusions:

- (1) Coronary artery disease: I do not find any evidence of congestive heart failure. His vitals were mildly elevated. He does complain of intermittent chest discomfort and it may be cardiac origin, but has had normal stress test about two years ago. There were no findings of heart failure. He is on anti-hypertensive medications and anti platelets.
- (2) Hepatitis C: There were no findings of Hepatosplenogaly or ascites. He apparently had acute jaundice about three years ago. His symptomatology to date may be related to active disease and obtaining his blood work from one month ago would be helpful.

* * *

- (b) An August 21, 2007 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: coronary artery disease, hyperlipidemia, Hepatitis C, fatigue, anterior wall myocardioinfarction (2004), and anxiety.

The internist provided the following limitations:

Claimant is able to lift up to 50 pounds occasionally. He is able to stand and/or walk at least two hours in an eight-hour workday. He has normal use of his hands/arms. He has normal use of his feet and legs.

NOTE: The internist did not state that claimant was totally unable to work.

- (c) An [REDACTED] discharge summary was reviewed.

The physician provided the follow discharge diagnoses:

- (1) CAD status post cyper drug-alluding stent x1 to the LAD.
- (2) Dyslipidemia;
- (3) Hepatitis C;
- (4) History of previous percutaneous intervention.

* * *

- (9) Claimant does not allege a mental impairment is the basis for his disability.

Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) Claimant does allege a combination of impairments (chronic fatigue, sleep dysfunction, shortness of breath, needs regular rest periods, and has rectal bleeding) (as a basis for his disability application). The current medical evidence does not establish that claimant is totally unable to work based on his combined physical impairments. None of the physicians who submitted reports stated that claimant was unable to work based on his physical impairments.

(11) Claimant filed simultaneous disability applications with the Department of Human Services and the Social Security Administration. The disputed eligibility period for the

DHS application is April 2007 to August 2008. The disputed eligibility period for claimant's SSI/RSDI application was originally April 2007 through October 2009. However, during the SSA hearing (October 30, 2009), claimant, through his attorney amended his disability onset date to March 2008 for SSA purposes.

(12) Claimant's amendment of the disability onset date (to March 2008) amounts to an admission against interest by claimant that he was not disabled for the period April 2007 through February 2008.

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 a Residual Functional Capacity (RFC) to perform unskilled light work.

The department evaluated claimant's impairments using SSI Listings 4.01, 3.01 and 5.04.

The department denied claimant's disability application due to his ability to perform past unskilled light work as a maintenance manager. 20 CFR 416.920(e).

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 standards is a legal term which is individually determined by 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 earning substantial income, he is not eligible for MA-P/SDA purposes.

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 claimant has impairments which meet the SSI definition of severity/duration. Claimant must establish an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Applying the *de minimus* standard, claimant meets the Step 2 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 a Listing. However, the department did evaluate claimant's impairments using Listings 4.01, 3.01, and 5.01.

Claimant does not meet any of the applicable Listings. Claimant does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant's most recent work was as a tire technician for [REDACTED]. This is medium/heavy work.

The medical evidence of record establishes that claimant's physical impairments limit his ability to stand continuously and lift the heavy weights (30 to 50 pounds) required when changing a tire.

Since claimant is no longer able to lift the amounts required of a tire technician, he is unable to return to his previous work. Therefore, claimant 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 preponderance of the medical evidence in the record that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant does not allege disability based on a mental impairment. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments. The medical evidence in the record establishes that claimant is precluded from heavy lifting and constant standing. However, the medical evidence does not show that claimant is totally unable to perform any work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant performs an extensive number of activities of daily living, has an active social life with his mother, helps his mother with her chores, drives his mother to appointments and runs his mother's household.

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 for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would afford claimant a sit/stand option at the workplace.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under 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: February 22, 2010

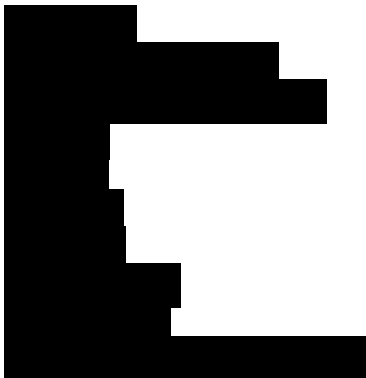
Date Mailed: February 22, 2010

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/tg

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