

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: 2008-16048

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 12, 2008

Wayne 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 Detroit on June 12, 2008. Claimant personally appeared and testified under oath.

The department was represented by Cheryl Johnson (Medical Contact Worker). The Administrative Law Judge appeared by telephone from Lansing.

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 (August 14, 2007) who was denied by SHRT (May 13, 2008) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 201.18.

(2) Claimant's vocational factors are: Age -- 47; education -- 10th grade; post high-school education -- none; work experience -- auto-body repairman and janitor.

(3) Claimant has not performed substantial gainful activity (SGA) since 2000 when he worked as an auto-body repairman.

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

- (a) Bilateral hip pain;
- (b) Bilateral hip dysfunction; and
- (c) Bilateral hip replacement recommended.

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

OBJECTIVE MEDICAL EVIDENCE [REDACTED]

A DHS-49 form showed claimant had bilateral hip osteoarthritis and probable left knee meniscus injury. On exam, he had antalgic gait, tenderness to palpation of the lateral left knee joint line and crepitus. The bilateral hip had decreased abduction and adduction and decreased internal and external rotation. The right leg is about 1 cm. shorter than the left. He also has dyslipidemia. The remainder of his exam was within normal limits (p. 8). He has no problem with the bilateral upper extremities. The doctor indicated claimant could only occasionally lift less than 10 pounds and stand/walk less than two hours. However, claimant did not medically require any assistive device for ambulation (p. 9).

ANALYSIS: Claimant had bilateral osteoarthritis in the hips with decreased range of motion (ROM) and pain. He also had tenderness and crepitus of the left knee. He had an antalgic gait, but was able to ambulate without assistance. Claimant's treating physician has given less than sedentary work restrictions, based on claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence. Per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), it will not be given controlling weight. The collective objective medical evidence shows that claimant is

capable of performing at least sedentary work. With surgery, claimant would be expected to be able to do more than sedentary work.

* * *

(6) Claimant lives with his mother and performs the following activities of daily (ADL's): dressing, bathing, cooking, dishwashing, light cleaning and laundry. Claimant uses a cane approximately 15 days a month. He does not use a walker or wheelchair. He uses a shower stool 16 times a month. He does not wear a neck brace or braces on his arms or legs.

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

(8) The following medical records are persuasive:

SHRT's summary of the medical evidence is presented at paragraph #5, above.

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. There is no psychiatric/psychological report in the record. Claimant did not provide a DHS-49 or DHS-49E to show his residual mental functional capacity.

(10) The probative medical evidence does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records do show the following impairments: bilateral hip osteoarthritis, probable left knee meniscus injury, and antalgic gait. The right leg is about 1 cm. shorter than the left. Claimant also has dyslipidemia.

(11) Claimant's treating physician reported that claimant is able to perform less than sedentary work, based on his physical impairments. However, this medical source opinion is inconsistent with the great weight of the objective medical evidence in the record.

(12) Claimant has applied for federal disability benefits with the Social Security Administration (SSA). His application is still pending.

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 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 denied claimant's application for MA-P/SDA based on claimant's vocational profile (younger individual at age 48, 10th-grade education, and history of unskilled work) [based on Med-Voc Rule 201.18]. SDA was denied based on PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity.

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 and performing substantial gainful activity (SGA) are not

disabled regardless of medical condition, 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 eligibility 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 16.909. 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 limits his physical/mental ability to do basic work activities, he does not meet the Step 2 disability criteria. SHRT found that claimant meets the severity and duration requirements.

Therefore, claimant meets the Step 2 eligibility 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.

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 an auto-body repairman. Auto-body repair work is medium work and requires constant standing, lifting, and bending. Since claimant has bilateral hip dysfunction

as well as a knee dysfunction, he is unable to return to his previous work as an auto-body repairman.

Therefore, claimant meets the Step 4 eligibility 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 alleges disability based on his bilateral osteoarthritis and probable left knee meniscus injury.

A careful review of the medical evidence in the record shows that claimant does have bilateral hip dysfunction. Claimant's physician states that claimant has the ability to do less than sedentary work. However, this medical source opinion is inconsistent with the great weight of the objective medical evidence. Per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), the opinion of claimant's physician cannot be given controlling weight.

Second, claimant thinks he is disabled based on his bilateral hip pain. 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 bilateral hip dysfunction and left knee dysfunction. Claimant currently performs many activities of daily living and has an active social life. Taking the medical

evidence in conjunction with claimant's testimony, claimant is able to perform unskilled sedentary work.

The department correctly denied claimant's MA-P application based on Step 5 of the sequential analysis, as presented above. Also, claimant is not eligible under Med-Voc Rule 201.18.

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 23, 2009

Date Mailed: February 24, 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 receipt date of the rehearing decision.

2008-16048/jws

JWS/jj

cc:

