

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: 2008-16086
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 4, 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, a telephone hearing was held in Kalamazoo on September 4, 2008.

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 (December 4, 2007) who was denied by SHRT (May 20, 2008) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age--43; education--high school diploma, post-high school education--attended [REDACTED] and was certified as a corrections officer; work experience--inspector for [REDACTED], owned and operated a commercial painting company, sold telephone systems, and served as a corrections officer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2006 when he was an inspector at [REDACTED].

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

- (a) Lymph node infection;
- (b) Unable to stand for long periods;
- (c) Unable to drive for long periods;
- (d) Chronic fatigue;
- (e) Status-post back surgery;
- (f) Status-post infection after surgery;
- (g) Chronic bilateral leg swelling;
- (h) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (May 20, 2008)

The medical information from 7/2007 to 11/2007 reported the mental and learning conditions controlled with medication. On review, he was alert and oriented to time, place and person and not in distress. He is independent in activities of daily living (pages 20-21).

Claimant is status-post laminectomy and gastric bypass. On examination 7/2007 to 11/2007, gait, heel and toe walk and tandem walk were normal. Muscle strength was 5/5 in all the extremities. Weight was maintained. The abdomen was soft and non-tender (page 12).

ANALYSIS:

Pain is reported in the back. Gait was without an assistive device. Claimant is alert and oriented. Personal and home care needs are met. The conditions are medically managed. It is assessed that claimant retains the capacity to perform at least medium unskilled work.

* * *

(6) Claimant lives with his wife and step-daughter and performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), mopping, vacuuming, and laundry (sometimes). Claimant uses a cane approximately 27 times a month and a walker approximately 14 times a month. He does not use a wheelchair or any braces. However, he does use a shower stool. Claimant was hospitalized in 2008 for a lymph node dysfunction.

(7) Claimant has a valid driver's license and drives an automobile approximately 8 times a month. Claimant is not computer literate.

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

(a) A [REDACTED] report was reviewed.

The surgeon states the following:

Claimant returns now 7 weeks post-lumbar laminectomy and decompression of the lateral recess on the left at L1/L2. He looks absolutely wonderful. He has lost 25 pounds. He is going to continue on his exercise regimen and I told him to come back in 3 months and that I would expect him to be down 20 more pounds. He is going to introduce some weight training in his routine.

* * *

(b) A [REDACTED] progress note was reviewed.

The physician provided the following information:

Claimant is a 43-year-old Caucasian male for follow-up on hospitalization from [REDACTED]. He was hospitalized in the psychiatric unit. He attempted suicide and has health issues. He does have lower extremity edema which is multi-factorial,

mostly because of hypoalbuminemia secondary to gastric bypass. He also had cellulitis of the lower legs and he was on Zyvox. He was placed on Wellbutrin. He does not have a psychiatrist at this point and he doesn't believe he is able to afford it because of a lot of copays with different specialists. He sees [REDACTED] for chronic back pain and [REDACTED] for his legs. He also has elevated WBC (white blood cells) and anemia. He also had hypokalemia and hypocalcemia, which is not new for him. Claimant states that he is doing better. He doesn't have any suicidal thoughts. His sleeping is not great. Sometimes he has pain, sometimes he just can't fall sleep. He had Ambien in the hospital and he would like to have Ambien CR. At this point, he is not 100% sure of what kind of medication he is taking. He also had an electrocardiogram and CT of the head in this hospital, but the results weren't done or weren't discussed with the patient and he wonders if I received them. Review of systems: He feels fatigued, sometimes he feels dizzy when he goes from sitting to standing position.

* * *

(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 testified that he is depressed. The medical evidence shows that claimant attempted suicide in February of 2007. He was treated with psychotropic medications at that time and showed marked improvement. However, there are no recent psychological/psychiatric reports in the record. 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 being treated for lower extremity edema, which is multi-factorial, mostly secondary to a gastric bypass, he also has cellulitis of the lower legs. While claimant does have some severe physical

conditions relating to his legs, the medical evidence does not establish that he is totally unable to work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application and claimant has 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'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 that claimant retains the capacity to perform at least unskilled medium work.

Based on claimant's vocational profile [younger individual (age 43), with a high school education and a history of unskilled and skilled work], the department denied MA-P based on Med-Voc Rule 203.28 as a guide. The department denied SDA based on PEM 261 because the nature and severity of the 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, 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 alleges disability based on a combination of impairments. Claimant's physical impairments (status-post lymph node infection, status-post gastric bypass, chronic leg swelling and fatigue) in combination with his mental impairments (depression) meet the definition for severity and duration. Claimant meets Step 2.

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 was most recently employed as an inspector for [REDACTED].

Claimant's most recent work as an automobile inspector was light semi-skilled work.

Although the combination of claimant's impairments (both physical and mental) is severe, there is little or no medical evidence in the record to establish that they totally preclude all work activities.

The medical evidence in combination with claimant's testimony at the hearing establishes that claimant is able to return to his previous semi-skilled light work as an automobile inspector.

Claimant does not meet 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 alleges disability based on depression. The only evidence in the record in support of claimant's position is a May 4, 2007 physician's assistant/certified report. The report provided the following diagnoses: Attention deficit-hyperactivity disorder; insomnia; mental illness, not otherwise specified. There is no evidence in the physician assistant/certified report to indicate that claimant is totally unable to work. Claimant is not disabled based on a mental impairment.

Second, claimant alleges disability based on his recent lymph node infection and gastric bypass surgery. In addition, claimant testified that he had leg swelling and fatigue.

The medical evidence in the record does not establish that the physical conditions reported by claimant are so severe that claimant is unable to do any work.

During the hearing, claimant testified that a major impediment to his return to work was the pain and discomfort arising out of his bilateral leg swelling.

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 combination of impairments (depression, lymph node infection, gastric bypass surgery, leg swelling and fatigue). Claimant currently performs many activities of daily living and has an active social life with his wife and step-daughter. Claimant has a valid driver's license and drives an automobile 8 times a month. Claimant was able to represent himself at the hearing competently. 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. In this capacity, he is able to work as a ticket taker for 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/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 7, 2010

Date Mailed: January 8, 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:

