

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2008-17915
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 17, 2008
Cheboygan 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 Cheboygan on December 17, 2008. Claimant personally appeared and testified under oath.

The department was represented by Jenne Vieau.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on April 23, 2010. Claimant waived the timeliness requirement so 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 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 (September 21, 2007) who was denied by SHRT (June 2, 2008 and April 28, 2010) based on 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—49; education—high school diploma, post-high school education—three semesters at [REDACTED] [REDACTED] (Business major); work experience—**currently employed** by [REDACTED] and [REDACTED] as an independent sales representative.
- (3) Claimant is performing Substantial Gainful Activity (SGA) since October 2008 as an independent auto salesman for [REDACTED] and [REDACTED].
- (4) Claimant has the following unable-to-work complaints:
 - (a) Left rotator cuff tear;
 - (b) Disc dysfunction in the neck;
 - (c) Disc dysfunction in the back;
 - (d) Numbness and pain in the right leg;
 - (e) Right lower back pain;
 - (f) Chest pain upon exertion.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (JUNE 2, 2008)

- (a) On exam in 12/2007, claimant reported having chest pain that he described as a dull ache and non-radiating (page 37). His blood pressure was 148/100. He was 68" tall and 200 pounds. Breath sounds were clear to auscultation and symmetrical. There was a grade II/VI aortic systolic heart murmur. There was regular rate and rhythm, without enlargement. There was normal S1 and S2 (page 36). He had decreased range of motion (ROM) on the left shoulder. There was no evidence of joint laxity, crepitation or effusion. Grip strength was intact. Dexterity was unimpaired. He had tenderness over the shoulder (page 35). His motor strength was reduced to -5/5 in the left lower extremity. Tone was normal. Sensory was intact.

Reflexes were +2 and symmetrical. He walked with a normal gait without the use of an assist device. Claimant underwent a stress EKG which was considered negative for ischemia to 10/2 METS (page 33).

ANALYSIS:

Claimant reported chest pain an elevated blood pressure with a murmur. However, he had a negative stress test to 10 mets. He had decreased ROM of the shoulder, and some tenderness, but no loss of dexterity or grip strength. Gait was normal. Claimant should avoid heavy lifting.

- (b) SHRT reviewed claimant's supplemental evidence. The new medical evidence does not meet MA-P requirements.

* * *

- (6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming (sometimes); and grocery shopping (sometimes). Claimant uses a cane approximately 7 times a month. He does not use a walker, a wheelchair, or a shower stool. He does not wear braces on his neck, back, arms, or legs. Claimant did not receive inpatient hospital services in 2007. In 2008 he was hospitalized for 1 ½ days to receive treatment for coronary artery disease. He received two stents while in the hospital.
- (7) Claimant has a current CDL/chauffeur's license. He drives an automobile approximately 8 times a month. Claimant is not computer literate. In 2008 claimant submitted between 12-14 employment applications. He attempted to perform physical labor at a cranberry farm but was unable to do the work.
- (8) The following medical/psychological records are persuasive:
 - (a) A summary of claimant's medical records is presented in paragraph #5 above.
- (9) There is no probative psychological evidence in the record. Claimant did not allege a mental impairment as the basis for his disability application.

- (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. The December 7, 2007 medical report notes that claimant has a grade II/VI aortic systolic heart murmur. Claimant completed a stress EKG test for ischemia to 10/2 METS. It was considered negative.
- (11) An [REDACTED] Discharge Summary reports that claimant's right coronary artery was large and normal throughout its course through to a normal PDA. The left main coronary artery appeared normal, however, the mid LAD was subtotally occluded to 90-95% at D2 tapering distally. The April 2008 discharge summary provides the following diagnoses:
- (1) Coronary artery disease, unstable angina;
 - (2) Systolic ejection murmur noted previously;
 - (3) Hypertension;
 - (4) Hyperlipidemia;
 - (5) Prior smoking.

The medical reports in the record do not establish that claimant is totally unable to work at this time due to a severe physical impairment.

- (12) Claimant recently applied for federal disability benefits with the Social Security Administration. His application is still pending.
- (13) In 2008, claimant filed 12 to 14 applications for employment. He attempted to perform physical labor at a cranberry farm, but was unable to complete the work.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA benefits 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 medium work.

Based on claimant's vocational profile [younger individual (age 49), 14 years of education and a history of unskilled and semiskilled work], the department denied MA-P eligibility based on Med-Voc Rule 203.28.

The department denied SDA eligibility based on PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity for 90 days or more.

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).

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 claimant is currently performing SGA. Claimant is currently working for the Straits Auto and Truck Company selling automobiles and trucks as an independent contractor.

The vocational evidence of record shows that claimant is currently performing SGA.

Therefore, claimant does not meet the Step 1 disability test. Based on claimant's substantial gainful activity, he is not eligible for MA-P/SDA under 20 CFR 416.920(b).

The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it decided the claimant was not eligible for MA-P/SDA. Furthermore, claimant did not meet his burden of proof to show that the department's denial of her MA-P/SDA application was reversible error.

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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 6, 2011

Date Mailed: June 6, 2011

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/sd/tg

cc:

