

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: 2008-26893
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 2008
Ingham 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 Lansing on September 16, 2008. Claimant is deceased and did not appear. Sworn testimony was presented by the department representative.

Claimant was represented by [REDACTED].

The department was represented by Ellen Arman (lead worker).

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 (January 18, 2007) who was denied by SHRT (August 13, 2008) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.18. Claimant requests retro MA for August, September and October 2007. Claimant's date of death is July 10, 2008.

(2) Claimant vocational factors are: age—52; education—high school diploma; post high school education—none; work experience—iron cutter and food service aid for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he was an iron cutter in September 2006.

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

- (a) Chronic neck and back pain;
- (b) Degenerative disc disease and disc bulging;
- (c) Diabetes mellitus (type 2);
- (d) History of retinopathy;
- (e) Borderline range of intelligence (full scale IQ=70);
- (f) Atypical chest pain with negative cardiac workup.

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

OBJECTIVE MEDICAL EVIDENCE (August 13, 2008)

SHRT denied claimant's application for disability benefits based on Listings 1.02, 1.04, 9.08, 12.04 and 12.05.

SHRT found that claimant was able to perform unskilled medium work based on Med-Voc Rule 203.18.

(6) Claimant's activities of daily living are unknown.

(7) Claimant's ability to drive an automobile is unknown. Claimant's computer literacy is unknown.

(8) The following medical are persuasive:

- (a) An [REDACTED] narrative evaluation was reviewed.

The psychiatrist provided the following history:

Claimant is a 54-year-old male who is here for an internal medicine examination to evaluate his disabilities. The internist provided the following history:

Claimant states that his main disability is related to problems with his back. Apparently in 2006, he fell and injured his lower back. He states he has had back pain since that time. Sometimes since then he has had injections done, although, he states that did not help significantly. He continues to have pain primarily in the lower back, without significant radiation. He also has a history of chest pains for a few years now. Back in 2004, he had a cardiac cauterization done and at that point it was felt he should be treated medically. He has been having increased chest pain, which he describes as sharp in nature on the left side. Sometimes it is a pressure sensation. It does not always seem to be related to exertion, however. He did apparently recently have an echocardiogram and is scheduled for a stress test in the near future. He also has a history of diabetes mellitus type 2 for the past 9 years.

He does have a history of retinopathy and has had laser surgery in the past and is scheduled to have further laser surgery next month.

Claimant uses a cane.

The internist provided the following assessment:

- (1) Chronic back pain;
- (2) Diabetes mellitus type 2;
- (3) Gives a history of chest pain that is not clearly typical for angina.

- (b) A March 27, 2008 Ph.D. psychological evaluation was reviewed.

A Ph.D. psychologist provided the following information.

The records from 2006 stated that claimant has been experiencing back pain and pain radiating to both hips and legs constantly. The record stated that he had experienced this for 6 years, with additional numbness and tingling at times. The results of the MRI stated “at L4-5, demonstrates diffuse degenerative disc disease with diffuse disc bulge and tiny central disc herniation with midline protrusion. There is facet hypertrophy and mild central canal stenosis.” The report also stated “at L5-S1 demonstrates a right paracentral disc herniation with foraminal and paracentral components, likely impinging upon the transversing right S1 root.” The report from March 26, 2007, stated “large right-sided disc extrusion at L5-S1 impinging on S1 nerve root.” The report also stated “degenerative changes at the L4-L5 level causing some lateral recess narrowing and canal narrowing.

The Ph.D. psychologist provided the following DSM diagnosis:

Axis I—depressive disorder, NOS; reading disorder; rule out alcohol dependence.

Axis V/GAF—53.

The Ph.D. psychologist noted that claimant is not capable of managing his own funds because it was unclear what claimant’s actual level of alcohol consumption was.

- (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. The Ph.D. psychologist provided a DSM diagnosis: Axis I—depressive, NOS; reading disorder; rule out alcohol dependence. The psychologist’s report, does not report any functional limitations except for the fact that claimant is unable to

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

(10) The probative medical evidence of record does not establish an acute physical (exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The [REDACTED] internist provided the following diagnoses: chronic back pain; diabetes mellitus type 2; and chest pain, not thoroughly typical for angina. The Sparrow internist did not report any functional limitations arising out of these diagnoses.

(11) Claimant's most prominent complaint is that he has chronic back pain.

(12) Claimant has not applied for federal disability benefits.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/retro/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 medium work. The department thinks that claimant is not eligible based on Listings 1.02, 1.04, 9.08, 12.04 and 12.05.

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, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

Claimant is deceased and is not currently performing SGA.

Claimant meets the Step 1 disability requirement.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means that the severe impairment is expected to last for 12 continuous months, or result in death. Based on the *de minimus* standard, claimant meets the severity and duration requirements.

However, even though claimant meets the severity and duration requirements, he must still meet his burden of proof to show he is unable to do any work.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege that he meets any of the Listings.

However, SHRT did evaluate claimant's eligibility under the following Listings: 1.02, 1.04, 9.08, 12.04 and 12.05. Based on a careful review of the medical evidence of record, claimant does not meet any of the above Listings at this time.

Claimant does not meet the Step 3 disability requirement.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as an iron cutter. In this capacity, he was required to stand constantly for an 8 hour shift and handle heavy pieces of iron.

Claimant's work as a steel cutter was medium unskilled work.

Based on the medical evidence of claimant's back impairment, he would not be able to do the heavy lifting (50 pounds or more) required of a person performing work as an iron cutter.

Since claimant is unable to return to his previous work as an iron cutter, he meets the Step 4 disability test.

STEP 5

The issue at Step 5 is whether claimant has the residual functional capacity to do other work. For purposes of this analysis, the classified jobs as sedentary, light, medium and heavy. These items are defined in the [REDACTED], published by the [REDACTED] [REDACTED] at 20 CFR 416.967.

Claimant alleges that he is totally unable to work due to a mental impairment (depression). The Ph.D. psychologist's report provides the following diagnoses: depressive disorder, NOS, reading disorder and rule out alcohol dependence. The GAF score was 53. Based on the medical evidence provided by the Ph.D. psychologist, claimant has not met his burden of proof to show that he is completely unable to do any work based on a mental impairment. The Ph.D. psychologist suggested that claimant might not be able to manage his funds. The Ph.D. psychologist did not suggest that claimant was totally unable to work.

Claimant alleges that he is unable to work due to back dysfunction, back pain, diabetes and atypical chest pain.

The Administrative Law Judge concludes that the objective medical evidence of record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based on the fact that he has not established, by objective medical evidence, that he cannot perform sedentary work, even with his impairments.

Furthermore, the combination of claimant's mental and physical impairments do not, completely rule out claimant's ability to perform unskilled sedentary work. The medical

evidence of record shows that claimant is able to work as an attendant at a parking ramp, as a ticker taker for a theater and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/retro/SDA application under Step 5 of the sequential analysis.

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/retro/SDA disability requirements under PEM 260/261.

Accordingly, the department's denial of claimant's MA-P/retro/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 11, 2010

Date Mailed: January 12, 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/vmc

cc:

