

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: 2008-27835
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 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 November 19, 2008. Claimant personally appeared and testified under oath.

The department was represented by Robert Cairns (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence (requested by SHRT). Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on November 19, 2008. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge made the final 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 a MA-P/retro/SDA applicant (April 23, 2008) who was denied by SHRT (August 22, 2008) due to insufficient evidence. Claimant requested retro MA for January, February and March 2008.

(2) Claimant's vocational factors are: age—51; education—high school diploma; post high school education—none; work experience—groundskeeper at a golf course, custodian for [REDACTED], tree trimmer for a tree service, and machine operator for a paper company.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since June 2006 when he worked as a groundskeeper at a golf course.

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

- (a) Visually impaired;
- (b) No vision in the right eye and marginal vision in the left;
- (c) Back pain;
- (d) Right hip pain;
- (e) Daily seizures (petite);
- (f) Experiences complete blindness after a seizure.

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

OBJECTIVE MEDICAL EVIDENCE (August 22, 2008)

SHRT denied claimant's application due to insufficient medical evidence.

SHRT requested additional information in order to assess the severity of claimant's impairments.

Supplemental medical evidence

(XXX) Note to ALJ – complete this section.

(6) Claimant lives with his sister and her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, light cleaning (sometimes), mopping (sometimes) and vacuuming. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant wears a knee brace approximately 7 days a month. Claimant received inpatient hospital treatment in 2007 and 2008 for headaches, confusion and seizures.

(7) Claimant does not have a valid driver's license and is unable to obtain one due to his seizures. Claimant is computer literate. Claimant walks 1½ to 2 miles approximately 12 times a month.

- (8) The following medical records are persuasive:

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

The consulting internist provided the following history:

Claimant sustained a cerebrovascular accident in 2006. At that time, he had an acute onset of left-sided eye blindness. He does not know the cause behind it, but has a history of hypercholesterolemia. He was seeing [REDACTED] in the past, but has not had a neurological evaluation due to lack of insurance or money. He is not on baby aspirin at this point. He states, however, that over the past 18 months, he has had seizures. He states those are "random" and does not know how frequently he gets them. He states his last one was one day ago. He states it does occur when he is under

stress. He does have an occasional aura where it feels like he “got hit in the back of the head.” He states he does lose consciousness, but does not know if he has tonic-clonic manifestations. He feels lethargic after his seizures. He denies any lacerations or fractures. He denies any incontinence. He has never had any treatment. He does not drive.

Claimant has not worked since 2006. He used to work as a custodian for a golf course and stopped because of his throat. He now lives with his family. He is able to do his activities of daily living. He states that he does not do any household chores. He now mostly listens to music and watches television. He states that he has episodes of problems with memory and confusion. He denies any real problems walking. He can stand about 20 minutes before he has problems with balance. He can lift about 25 pounds. He has no problem sitting.

The consulting internist provided the following conclusions:

Cerebrovascular accident: the only neurological finding present was a lateral gaze defect of his left eye, indicative of cranial nerve VI pathology. He does have episodes of seizure by history. There were no other focal neurological deficits today. He does complain of back and hip pain and this may be a manifestation from his seizures. At this point, imaging studies with a MRI or CT would be of benefit. He would also benefit from an aspirin. He did have findings of obstructive pulmonary disease, but there were no cardiac murmurs or anything to suggest a cardiac emboli. He did not have any peripheral artery disease. At this point, his current prognosis is guarded due to the nature of his disease, and lack of care. Unfortunately, his eye is not remedial, but maintenance for prevention would be indicated. He does not require the use of an assistive device.

(b) A [REDACTED] narrative report was reviewed.

The ophthalmologist provided the following summary of his evaluation:

In summary, claimant has a complete left third nerve palsy. He has had no improvement in six months. His imaging has shown high signal change in the brain stem with resolution. It is not clear from the radiology reports whether this was thought to be an ischemic event, which resolved, or a demyelinating event. Given the lack of improvement six months after onset, I told him I was very pessimistic that there would be any recovery at this point. He complains of no light perception vision in left eye without an afferent pupillary deficit and without evidence of retinopathy. He also claims decreased vision in the right eye, yet read 20/20 and had non-physiologic visual field testing. In essence, there is no evidence of organic visual loss in either eye. At this point, I would recommend treatment of his vascular risk factors, given the probability of this being a vascular event.

(9) There is no probative psychological evidence in the record at this time to establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not establish a severe psychological impairment because he 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. The recent medical reports do provide the following diagnoses:

- (1) Cerebrovascular accident;
- (2) Findings of obstructive pulmonary disease without cardiac murmurs or anything to suggest a cardiac emboli;
- (3) Complete left third nerve palsy;
- (4) 20/20 vision in the right eye.

The consulting physicians who provided reports for the record did not state that claimant is totally unable to work given his history of seizures and his diminished vision, claimant would not be able to perform work at high levels and would not be able to operate machinery.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal.

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 to perform unskilled sedentary work.

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, 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 that he has an impairment which is expected to result in death or has lasted or is expected to last for 12 months and thereby totally prevents all basic work activities. 20 CFR 416.909.

Since the severity/duration requirement is a *de minimus* requirement, 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. SHRT evaluated claimant's eligibility under SSI Listings 2.02, 1.02 and 1.01. Claimant does not qualify under these Listings.

Therefore, 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 previously worked as a groundskeeper for a local golf course. In that capacity, claimant operated mowers and cutters and other dangerous machinery.

Since claimant now experiences unpredictable chronic petite seizures, he is unable to return to his work as a groundskeeper at this time.

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 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. Since there are no recent psychological/psychiatric reports in the record to establish a diagnosis, claimant does not meet the disability definition based on a mental impairment.

Second, claimant alleges disability based on his seizure disorder. The medical evidence of record (October 17, 2008) shows a diagnosis of cerebrovascular accident and findings of obstructive pulmonary disease. These diagnoses reduce claimant's ability to drive and work above the ground, but they do not preclude all employment. Claimant also alleges disability based on his vision impairments.

Third, claimant alleges disability based on his back pain and right hip pain. Unfortunately, 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 back and hip pain is profound and 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 back dysfunction, hip dysfunction and related pain. Claimant currently performs several activities of daily living, has an active social life with his sister and her husband and walks 1½ to 2 miles approximately 12 times a month. 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 at [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/SDA application using 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 26, 2010

Date Mailed: February 26, 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:

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