

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: 2008-28326
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 30, 2008
Genesee 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 Flint on September 30, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Pam Lenoir (AP worker).

Claimant requested additional time to submit new medical evidence. The record was extended until October 13, 2008 at 4:00 p.m.

Claimant's medical evidence was submitted to the State Hearing Review Team (SHRT) on October 15, 2008. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After a second SHRT disability denial, the ALJ 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 a MA-P/retro/SDA applicant (January 14, 2008) who was denied by SHRT (August 26, 2008) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requested retro MA for October, November and December 2007.

(2) Claimant's vocational factors are: age—56; education—high school diploma; post high school education—none; work experience—currently employed as a food packer for [REDACTED], sales person for [REDACTED], cook, server and prep cook for a café and janitor for the [REDACTED] in Battle Creek.

(3) Claimant is currently working part-time for the [REDACTED]. Claimant currently works approximately 18 hours a week and earns [REDACTED] an hour. Claimant's earnings are approximately [REDACTED] per month gross.

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

- (a) Back pain;
- (b) Status post motor vehicle accident ([REDACTED]);
- (c) Reduced range of motion;
- (d) Chronic pain;
- (e) Headaches;
- (f) Mental slowness;

- (g) Insomnia;
- (h) Fatigue;
- (i) Angina;
- (j) Muscle spasms;
- (k) Spinal strain.

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

OBJECTIVE MEDICAL EVIDENCE (██████████)

Treatment notes (most recent ██████████) indicate claimant was treated for complaints of neck and back pain which appeared stable. The cervical spine demonstrated paravertebral muscle spasm, tenderness, and decreased range of motion. The lumbar spine also demonstrated muscle spasm, tenderness, and decreased range of motion. His leg and arm function was normal. Diagnoses are acute/chronic cervical spine strain, acute/chronic lumbar spine strain, and opioid dependence (page 5).

Hospital records of ██████████ were for a one day admission for atypical chest pain.

ANALYSIS: Records in the file do not demonstrate a significant function loss. Medical opinion was considered in light of CFR 416.927. The medical evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

(6) Claimant lives in a rooming house with three other persons. He performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, laundry and grocery shopping. Claimant does not use a cane, a walker, or a wheelchair.

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

(8) The following medical records are persuasive:

- (a) Claimant's medical records are summarized in the SHRT decision, at paragraph 5 above.

(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 has mental slowness. There is no clinical evidence to support this. Claimant did not submit 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. A [REDACTED] [REDACTED] progress note provided the following assessment: claimant is a 56-year-old male with a history of heroine/opiate abuse and pain post motor vehicle accident.

The [REDACTED] provided the following assessment:

- (1) Opioid dependence;
- (2) Other issues;
- (3) Asthma, sleep dysfunction, hepatitis C, neutropenia.

The [REDACTED] physician did not report any functional limitations.

(11) Claimant recently applied for 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 based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform basic work activities.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The department thinks that claimant retains the residual functional capacity to perform normal work activities.

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).

Claimant is currently employed as a food packer for an organization serving [REDACTED]. In this capacity, claimant works approximately 18 hours a week at [REDACTED] an hour. Claimant's approximate gross monthly income is [REDACTED].

The medical/vocational evidence of record shows that claimant is currently performing SGA working for [REDACTED] as a food packer.

Therefore, claimant does not meet 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).

Claimant has a potpourri of impairments, including back pain, limited range of motion, chronic pain, headaches, insomnia, fatigue, angina, muscle spasms and spine strain.

These impairments apparently are the consequence of claimant's automobile accident in 2004.

While claimant's impairments are uncomfortable and inconvenient, they do not totally prevent him from work. This is shown by his current employment for [REDACTED] which involves working 18 hours a week and earning approximately [REDACTED] a month gross.

Therefore, claimant does not meet the Step 2 disability test.

STEP 3

The issue at Step 3 is whether claimant meets Med-Voc Rule 201.06.

Grid Rule 2.01.06 does not apply in those instances where the claimant is employed. Claimant's employment precludes consideration of Med-Voc Rule 201.26.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work.

Claimant is currently employed part-time as a packer for the [REDACTED] program. As a packer for [REDACTED], claimant is able to do many physical and mental activities, and is demonstrating his ability to perform substantial gainful activity.

Therefore, 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. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the *Dictionary of Occupational Titles* published by the U.S. Department of Labor at 20 CFR 416.967.

The medical evidence of record establishes that claimant is able to perform part-time sedentary work. In addition to claimant's part-time work as a food packer for [REDACTED], he is able to work as a parking lot attendant, as a ticket taker at a theater, and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/SDA application using 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: March 2, 2009

Date Mailed: March 3, 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.

2008-28326/JWS

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:

