

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: 2008-29129
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2008
Arenac 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 Standish on November 19, 2008. Claimant personally appeared and testified under oath.

The department was represented by Rick Joles (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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/SDA applicant (June 10, 2008) who was denied by SHRT (September 4, 2008) based on claimant's ability to perform his past unskilled medium work.

(2) [REDACTED]

(3) Claimant has not performed Substantial Gainful Activity (SGA) since November 2006 when he [REDACTED]

(4) Claimant has the following unable-to-work complaints:
(a) Pinched nerve in lower back;
(b) Lower back pain.

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

OBJECTIVE MEDICAL EVIDENCE (September 4, 2008)

MRI of 4/2008 of the lumbar spine reported claimant to have moderate protrusion of L4-5 with possible nerve root involvement and minimal protrusion of L5-S1 (page 30).

Neurosurgeon exam of 6/5/08 indicated claimant had normal gait, negative straight leg raising, reflexes were increased, motor exam was normal, tone and sensation were also normal (page 28).

ANALYSIS: Claimant has complaints of back pain with MRI evidence of disc protrusion. However, his physical exam did not demonstrate a very significant function loss. Due to his back condition, claimant should avoid heavy lifting and constant stooping and crouching.

Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

(6) Claimant lives with his parents. He has 4 minor children in foster care. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, or a wheelchair. He does use a shower stool on a daily basis. He does not wear a brace on his back, neck, arms, or legs. Claimant received inpatient hospital treatment in 2007 in order to have ear surgery.

(7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant is computer literate. Claimant has applied for 6 different jobs in the last 12 months. He has applied for services [REDACTED] and he thinks that he has been accepted into the program.

(8) The following medical records are persuasive:

- (a) A June 2, 2008 Medical Examination Report (DHS-49) was reviewed.

The family practice physician provided the following diagnoses: low back pain.

The family practice physician reported the following physical limitations: claimant is able to lift less than 10 pounds frequently. He is able to lift up to 25 pounds occasionally. He is able to stand/walk at least 2 hours in an 8 hour day. He is able to sit about 8 hours in an 8 hour day. He has normal use of his hands/arms for simple grasping, reaching, pushing/pulling and fine manipulating. Claimant is able to use his feet/legs normally to operate foot/leg controls.

The family practice physician reports that claimant has no mental limitations.

- (b) A June 5, [REDACTED] report was reviewed.

The neurosurgeon provided the following history:

Claimant presents with a history of low back pain and left sciatica since 2006. He tells me he works at a place where he has to do stocking, lifting and twisting and he is not sure how his pain started. He stated that the store did not have any back restraints and he feels that this was because of his long hours of work which were the cause for his problems. In any case, his specific pain is in the left leg, goes down to the foot. He seems to be a poor historian. All of his toes have some numbness. No other aggravating or relieving features. No relationship to coughing or sneezing, sitting, standing, or walking or sphincter disturbance.

The neurosurgeon provided the following assessment:

I reviewed the MRI of the lumbar spine, dated 4/24/2008, and I believe that there is a moderate size left paracentral protrusion at L4-5 and mild left paracentral protrusion at L5-S1.

Assessment: I believe that his symptoms are related to left L4-5 HMP and that the options have been discussed. He would like to have physical therapy which a slip has been given. He will arrange this himself. I shall see him in 6 weeks time.

(9) The probative psychological 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. There are no psychological/psychiatric reports in the record to substantiate a severe mental impairment. 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. The medical reports in the record provide the following diagnoses: low back pain; pain in the left leg radiating down to the foot; numbness in the toes. The neurosurgeon provided a diagnosis of moderate size left paracentral protrusion at L4-5 and mild left paracentral

protrusion at L5-S1. The consulting physicians who provided medical reports did not state that claimant is totally unable to work. However, the medical records do establish that claimant is unable to perform repetitive heavy lifting.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. His application is pending.

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 retains the physical residual functional capacity to perform a wide range of unskilled medium work. Claimant's past work as a clerk is light work as it is normally performed. Therefore, claimant retains the capacity to perform his past relevant work as a grocery clerk.

MA-P and SDA were denied based on claimant ability to perform his past relevant unskilled medium 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 precludes all 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. Claimant does not allege disability based on the 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 carryout clerk and grocery cart organizer. Claimant's work as a carryout clerk was unskilled light work. Claimant also worked as a stocker at the grocery store.

The medical evidence of record establishes that claimant is not able to lift heavy amounts on a regular basis for an 8 hour shift. Since claimant's previous work as a carryout clerk, cart organizer and grocery stocker involved heavy lifting, he is not able to return to his previous job at the grocery store.

Therefore, claimant meets 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 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.

Second, claimant alleges disability based on his pinched nerve and low back dysfunction. The current medical records show the following diagnoses: low back pain; numbness in the toes; and a moderate sized left paracentral protrusion at L4-5, with a mild left paracentral protrusion at L5-S1. These diagnoses preclude claimant from returning to his previous work as a carryout clerk and shelf stocker for the grocery store. However, these diagnoses do not preclude all employment.

Third, claimant alleges disability based on chronic back pain associated with his low back dysfunction at L4-5 and L5-S1. 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 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 and radiating pain. Claimant currently performs an extensive list of activities of daily living, has an active social life with his parents, sees his 4 minor children on a regular basis, drives an automobile 12 times a month, and is computer literate. 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 for Wal-Mart.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application at 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: December 30, 2008

Date Mailed: January 5, 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.

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

