

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: 2008-6835
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2008
Midland 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 Midland on March 5, 2008. Claimant personally appeared and testified under oath.

The department was represented by Sharon Martens (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT.

Claimant did not submit new medical evidence by Record Close Date.

ISSUE

Did the department establish medical improvement that enables claimant to perform substantial gainful activities for MA-P/SDA purposes?

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 current MA-P/SDA recipient. The department decided to close claimant's cases based on medical improvement. SHRT issued a decision on February 1, 2008 stating that claimant's condition is improving or is expected to improve within 12 months of the date of onset, and claimant is no longer eligible for MA-P/SDA because he is able to work. The original approval date was July 2006. The approval is apparently based on the Decision and Order of Administrative Law Judge Linda Steadley Schwarb dated July 25, 2006.

(2) Claimant's vocational factors are: age—46; education—high school diploma; post-high school education—one semester at [REDACTED] (Computer Drafting major); work experience—dishwasher, clock repairman, hardware store manager, and stocker at [REDACTED] Market.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2008 when he worked approximately 15 hours a week as a dishwasher.

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

OBJECTIVE MEDICAL EVIDENCE (FEBRUARY 1, 2008):

Claimant underwent arthroscopic surgery of the right knee in 4/2005 and the left knee in 5/2005 (pages 4-7). An MRI of the right knee showed mild degenerative changes and a small medial meniscus tear (page 8). An MRI of the left knee showed mild changes and a small tear of the lateral meniscus (page 12). An MRI of the lumbar spine showed mild degenerative changes (page 34). According to an 8/2007 consultative exam, he was 70" tall and 160 pounds with a history of juvenile rheumatoid arthritis. His blood pressure was elevated (however he was not taking medication). He did not exhibit any neurological deficits or joint inflammation. His gait was normal and he had mild limitation of motion of the neck, back and knees (pages 170-173).

ANALYSIS:

The Administrative Law Judge decision of 7/2006 did not take into consideration the objective medical evidence coupled with claimant's vocational profile. The totality of the evidence shows that claimant can perform a wide range of unskilled light work.

(5) The objective medical evidence (claimant's testimony) shows that claimant history of joint problems has remained constant.

In addition, the consultative internal medicine evaluation, provided by [REDACTED]

[REDACTED] shows the following impression:

- (1) Bilateral degenerative disease of the knees;
- (2) Hypertension, uncontrolled due to non-compliance;
- (3) Neck pain, probably secondary to degenerative disc disease;
- (4) Low back pain, intermittent.

The consulting physician also notes that claimant had a left hand injury where some part of the metatarsal was fractured. He underwent surgery on his left hand 5 times. He has decreased grip strength in his left hand. He lost about 70% function of his left hand due to the metatarsal injuries. He underwent surgeries and all the correctable things were repaired.

The consulting physician also noted that claimant has started developing some neck pain, and recently underwent evaluation by x-rays and MRI's. Claimant was told that he has some bulging discs, but not protruding enough to have any impact on the nerves.

Sometimes, he does have pain radiating into the hands and thinks the bulging is affecting nerves once in a while.

He worked repairing clocks for 2 years. Once he started doing that, he noticed the neck pain more. Now he is not working.

CONCLUSIONS OF LAW

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 does 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).

ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY (SGA)

Under current MA-P/SDA policy, the **department has the burden of proof** to establish that claimant is medically able to return to work. PEM 260/261. Claimant's original approval appears to have based on his diagnosis of rheumatoid arthritis. Administrative Law Judge Steadley Schwarb relied on the following conditions: Bulging disc at L4-5, degenerative changes of the spine at C6-7, hypertension, rheumatoid arthritis, degenerative disc disease and chronic pain of the neck, mid-spine, low back and bilateral knees.

On March 7, 2006, claimant's physiatrist provided the following diagnoses: Neck pain, low back pain, degenerative disc disease of the cervical spine and cervical spondylolisthesis.

The physician opined that claimant was incapable of any work duties due to pain.

The medical evidence of record does not establish that claimant's condition has improved to the point that he is now able to work.

The department's medical evidence, in particular the consultative internist evaluation, indicates that claimant's degenerative disease of the knees remains; in addition claimant has hypertension and neck pain secondary to his degenerative disc disease.

Therefore, the Administrative Law Judge concludes that claimant is not, at this time, able to return to substantial gainful activity. It should be noted that claimant attempted to work as a dishwasher but was unable to perform the duties, including standing for an 8 hour shift, due to his osteoarthritis in the knees.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established the required medical improvement required by PEM 2661/ 261.

Accordingly, the department's decision to close claimant's MA-P/SDA is, hereby, REVERSED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 11, 2009

Date Mailed: September 14, 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 receipt 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

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