

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: 2008-9936
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 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 April 16, 2008. Claimant personally appeared and testified under oath.

Claimant was represented at the hearing by [REDACTED].

The department was represented by Jerri Messeroll (AP supervisor).

Claimant requested additional time to submit new medical evidence. Claimant's rep did not submit any new medicals by due date (April 23, 2008). The record was closed on that date. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT.

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 (April 20, 2006) due to Medical Review Team's (MRT) denial of disability. (There was no State Hearing Review Team (SHRT) decision at the time of the Administrative Hearing). Claimant requests retro MA for July 2006.

(2) Claimant's vocational factors are: age—47; education—high school diploma; post-high school education—attended [REDACTED] and obtained a barbers license in 1980; work experience—barber.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 1985 when he was employed as a barber at a local hair salon.

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

- (a) Needs hip replacement;
- (b) Arthritis of the back;
- (c) Poor memory;
- (d) Poor eyesight;
- (e) Poor hearing on right side;
- (f) Inability to sit for long periods;
- (g) Inability to stand for long periods.

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

OBJECTIVE MEDICAL EVIDENCE [REDACTED]:

Consultative examination of [REDACTED] reported claimant was cooperative with normal mental status. He had complaints of back pain with all lumbar spine motions and some left hip and right hip movements. He had mild difficulty getting on and off the examination table, squatting, and mild difficulty heel and toe walking. Motor strength and tone were normal. He walked with a

wide-based gait without a cane and insisted on using the cane for more than a few steps. The physician opined that his pain was likely a combination of mechanical pain and degenerative disc disease. He also opined claimant could walk without the cane but it did seem to help with the pain. He was not taking any pain medications. There did not appear to be an element of nerve root irritation. Left hip extension demonstrated multiple mild changes. The lumbar spine x-ray demonstrated mild to moderate changes at the L5-S1 and mild changes at the L1-2.

Hospital records of [REDACTED] reported claimant was treated for a new onset of diabetes with hyperglycemia.

Hospital records of [REDACTED] indicate claimant was admitted for detox of multiple substances including cocaine and heroin (page 30).

Hospital records of [REDACTED] reported claimant to have a complaint of chest pain which was not typical of cardiac chest pain angina. A Dobutamine stress was negative. Lungs were clear. Heart sounds were normal. Motor strength and sensation was normal. (Page 40, 48.)

Hospital records of [REDACTED] reported claimant to be treated for a complaint of chest pain, again not typical of angina. The history indicated he has pain in his hip and uses a cane. The physical examination made no comment regarding extremities other than to say no edema and nonfocal examination for the neurological examination. (53.)

ANALYSIS

Claimant has leg and back pain and uses a cane to aid ambulation to ease up on pain.

The x-ray evidence does not demonstrate an impairment that would limit claimant's ambulation as much as he indicates. However, accepting his limitations at face value, claimant would be limited to sedentary work which given his vocational profile, would still direct a decision of denial of benefits.

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

* * *

(6) Claimant lives at a residential drug rehabilitation facility operated by Lansing Teen Challenge. He performs the following Activities of Daily Living (ADLs): Dressing, bathing, cooking, dishwashing, light cleaning, laundry (sometimes) and grocery shopping. Claimant uses a cane on a daily basis. He does not use a walker, wheelchair, shower stool or hand/arm braces. Claimant does use an Amigo electric cart at the grocery store.

(7) Claimant has a valid driver's license and drives a [REDACTED] van approximately 3 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) See the SHRT summary of medical evidence in paragraph #5, above.

(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. There is no evidence in the record that claimant has recently been evaluated by a PhD psychologist or psychiatrist. Claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(10) The objective medical evidence, standing alone, does not establish an acute exertional (physical) condition expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has the following conditions: Right hip dysfunction, arthritis, memory dysfunction, vision dysfunction, right hearing dysfunction.

(11) Claimant's primary complaints are his right hip dysfunction and his inability to sit or stand for long periods.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his claim. 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.

Claimant requests retro-MA for July 2006.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform a wide range of unskilled sedentary work.

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

Based on claimant's vocational profile [younger individual (age 47), with a high school education and a history of working as a licensed barber], claimant's MA-P application must be denied based on Med-Voc Rule XXX as a guide.

The department denied SDA benefits because the nature and severity of claimant's impairments do not preclude all sedentary work for the required period of time.

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 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).

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 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, claimant's who are working or performing substantial gainful activity (SGA) are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The medical/vocational evidence of record shows that claimant is not currently performing SGA.

Claimant meets the Step 1 eligibility 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 from the date of application. 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)

If claimant does not have an impairment or combination of impairments which profoundly limit his physical and/or mental ability to do basic work activities, he does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT correctly found that claimant does not meet the severity and duration requirements.

Claimant does not meet the Step 2 eligibility 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 a Listing.

Claimant does not meet the Step 3 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a barber in a local hair salon.

Because claimant testified that he is unable to stand or sit for long periods, claimant is unable to return to his previous work as a barber.

Based on the medical evidence of record, claimant meets the Step 4 eligibility 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/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled, sedentary work. Claimant testified that he drives the [REDACTED] van to Detroit as part of his rehab assignment at the teen center. Also, claimant is able to work as a ticket-taker for a theatre, as a pizza delivery driver, as a parking lot attendant and as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to his return to work was his hip pain secondary to his hip dysfunction. 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 credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his right hip dysfunction, hip pain, and his inability to stand and sit for long periods. Claimant currently performs numerous activities of daily living, drives a van for [REDACTED], and is computer literate. This means that claimant is able to perform unskilled, sedentary work (SGA).

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet the MA-P/SDA disability requirements under PEM 260/261. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis, as described above.

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 24, 2009

Date Mailed: February 24, 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.

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cc:

