

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: 2008-8738
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 26, 2008
Luce 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 Newberry on March 26, 2008. Claimant personally appeared and testified under oath. The department was represented by Lindy Auble (FIS).

Claimant requested additional time to submit new medical evidence.

Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. Claimant did not submit probative new medical by the due date.

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 (August 8, 2007) who was denied by SHRT (February 20, 2008) due to claimant's ability to perform a wide range of medium work. SHRT relied on Med-Voc Rule 203.28 as a guide. Claimant requests retro MA for May, June and July, 2007.

(2) Claimant's vocational factors are: Age 42; education -- high-school diploma; post high-school education -- attended a school to become a [REDACTED] prison guard; work experience -- truss builder, production work at a bathtub factory, and handyman at a metal fabricating factory.

(3) Claimant has not currently performed substantial gainful activity (SGA) since he was a truss builder in 2006.

(4) Claimant has the following complaints:

- (a) Status post spinal surgery (tumor removed in [REDACTED]);
- (b) Status post tumor on spine; and
- (c) Seizures when working.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

In [REDACTED], claimant underwent surgery to remove a benign tumor (schwannoma) (pp. 80-81). In [REDACTED], he was doing well postoperatively (p. 82). A CT of the lumbar spine was normal with mild degenerative disease (p. 83). An MRI of the thoracic spine showed mild changes (p. 89), and a later MRI of the thoracic spine showed postoperative changes (p. 109). An EEG was normal (p. 130). A [REDACTED] exam found claimant with normal strength in his upper and lower extremities with a normal gait. His visual fields were normal. His blood pressure was normal. He did not exhibit any neurological deficit (p. 111).

ANALYSIS: Claimant has a severe mental or physical impairment, but a review of the medical evidence of record shows that the alleged impairments do not meet or equal a Social Security listing. The objective medical evidence in the file demonstrates the physical residual functional capacity to perform a wide range of medium work.

* * *

(6) Claimant lives with his parents and performs the following activities of daily living (ADL's): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant went hunting approximately five times in November, 2007.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate. Claimant has been referred to [REDACTED] [REDACTED] for evaluation.

(8) The following medical records are persuasive:

The SHRT summary of the medical evidence (paragraph #5, above) is incorporated by reference.

(9) The probative medical evidence does not establish an acute mental (non-exertional) impairment 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 been recently evaluated by a Ph.D. psychologist or a psychiatrist. Claimant did not submit a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence, standing alone, does not establish an acute physical (exertional) condition expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has the following conditions: status

post spinal surgery (removal of benign tumor in [REDACTED]); mild degenerative changes of the lumbar spine; and mild degenerative changes of the thoracic spine.

(11) Claimant's primary complaints are reduced ability to work subsequent to spinal surgery in [REDACTED] and seizure activity.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. His application was denied. He filed an untimely appeal.

CONCLUSIONS OF LAW

Claimant's Position

Claimant thinks that he is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above. Claimant also requests retro MA for May, June and July, 2007.

Department's Position

The department thinks that claimant has the residual functional capacity (RFC) to perform a wide range of medium work. The department thinks that claimant has a severe impairment. The department thinks that claimant's impairment does not meet or equal the intent or severity of a Social Security listing. Based on claimant's vocational profile [younger individual (age 42) with a high-school education and a history of unskilled work], MA-P must be denied based on Med-Voc Rule 203.28 as a guide. The department denied SDA benefits because the nature and severity of claimant's impairments do not preclude all work activity 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 Family Independence Agency 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 and performing 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 severity/duration criteria. 20 CFR 416.920(a). If claimant does not have an impairment or combination of impairments which profoundly limits 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 truss fabricator for a truss company.

The medical records do show that claimant has a severe impairment; however, the medical records do not establish that claimant is unable to perform his previous work as a truss fabricator.

The Administrative Law Judge was unable to find any work limitation prescribed by a licensed physician in the medical record. Based on the medical evidence of record, claimant is able to return to his most recent work as a truss fabricator.

Claimant does not meet 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/light/medium work.

During the hearing, claimant testified that a major impediment to his return to work was seizure activity. The medical evidence of record does not establish a severe seizure condition. The medical evidence of record does not document or evaluate claimant's seizure condition. The Administrative Law Judge concludes that claimant's testimony about his seizure activity is

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 seizure activity and the limitations arising out of his [REDACTED] spinal surgery. Claimant currently performs extensive activities of daily living and is an active hunter. This means that claimant is able to perform sedentary/light/medium 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 that claimant does not meet the MA-P/SDA disability requirements under PEM 260 and 261. Claimant is not disabled for MA-P/SDA purposes based on Steps 3, 4 and 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: April 29, 2009

Date Mailed: April 29, 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/jj/tg

cc:

