

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: 2009-10228
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2009
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, a telephone hearing was held on March 11, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED] from [REDACTED].

The department was represented by Mary Behren (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was submitted to the State Hearing Review Team (SHRT) on March 12, 2009. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge 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)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?

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 applicant (August 26, 2008) who was denied by SHRT (January 23, 2009) based on claimant's due to claimant's failure to establish an impairment which meets the departments severity and duration requirements. Claimant requests retro-MA for May, June and July 2008.

(2) Claimant's vocational factors are: age--30; education—high school diploma, post-high school education--none; work experience—forklift operator for a warehouse, produce stand manager and package sorter for Fed-Ex.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since November 1999 when he worked for a warehouse as a forklift operator.

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

- (a) Numbness in the left hand;
- (b) Numbness on the left side;
- (c) Fatigue;
- (d) Loss of balance;
- (e) Drags left leg.

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

OBJECTIVE MEDICAL EVIDENCE

SHRT decided that claimant does not meet the severity and duration requirements for MA-P under 20 CFR 416.435.

SHRT evaluated claimant's application using Listing 11.09. SHRT determined that claimant does not meet any of the Listings.

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning (sometimes), laundry and grocery shopping. Claimant uses a cane approximately five times a month; he does not use a walker, a wheelchair or a shower stool. He does not wear braces. Claimant received inpatient hospital care in July 2008 for medical studies related to his MS.

(7) Claimant has a valid driver's license and drives an automobile approximately four times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) An October 1, 2008 [REDACTED] report was reviewed. The neurologist provided the following background: HPI: I had the pleasure of seeing claimant in the office for a follow-up. He is a 29-year-old white male, who, on 7/27/2007 was admitted to the hospital with ataxia and other neurologic symptoms. He was also experiencing coordination and numbness of his left upper extremity as well as dizziness. He then was placed on IV steroids. His symptoms then improved but he has been left living numb-like sensation of his left upper extremity. The numbness is intense in the left hand and the forearm. Sometimes he feels uncoordinated with that extremity. Sometimes objects fly out of his hand without any warning. His balance is practically back to normal. He denied lightheadedness or dizziness. He read about the medications for multiple sclerosis. He stated that he has chosen to start on Copaxone. He does not have the money for the medication. Therefore, we'll try to enroll him in the manufactures program for Copaxone and see if they can provide him that medication.

* * *

Claimant stated that for several years, he has been trying to find a job, but there is nothing for him now that he has been diagnosed with multiple sclerosis, he says he has more problems than ever before.

His neurologist provided the following impression: Relapsing, remitting multiple sclerosis. Claimant has decided to start on Copaxone. We will try to enroll him with the manufactures program for that medication so he can be started on that medication as soon as he is approved, and receives the medication.

I have talked to him extensively about symptoms and the future that could suggest that he is suffering from a MS relapse. He does not want to hear the word relapse. He said he has had enough symptoms and that he never wants to have another spell like the one he had when he went to the hospital.

He knows that Copaxone is an immunomodulating medication I that may that decrease the frequency of relapses by one third. He knows that the medication is not a cure.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition which prevent claimant from performing all customary work functions for the required period of time. 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. Claimant's neurologist does indicate that claimant could have a relapse even though claimant will be taking medication to control his MS, he would not be able to operate dangerous machinery. Otherwise, there is no medical information in the record that would preclude other (sedentary) types of employment.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P benefits based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform normal work activities. The department reviewed claimant's eligibility under Listing 11.09. Claimant does not meet the requirement of the applicable SSI Listings at this 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).

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 purposes. PEM 260. "Disability," as defined by MA-P 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.

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).

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 an impairment which is expected to result in death, or has existed for 12 months, totally preventing all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

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. SHRT considered the following Listings in evaluation claimant's application: 11.09.

There is no medical evidence in any of the records provided by Claimant or his representative that claimant's doctors finds him eligible under any of the SSI Listings, including Listing 11.09.

Therefore, 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 hi-lo driver for a warehouse. This was sedentary work.

The recent report prepared by claimant's neurologist does not list any particular functional limitation due to claimant's MS. However, claimant would not be able to return to work that involves driving dangerous machinery or dangerous heights.

Since claimant is unable to return to his work as a hi-lo driver, he 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 mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on his MS and the accompanying symptoms. The most recent report from claimant's neurologist (October 1, 2008) does not state any functional limitations with regard to claimant's ability to work. There is no indication in the neurological evaluation that claimant is unable to perform the sedentary activity.

During the hearing, claimant testified that a major impediment to his return to work was fatigue, loss of balance and numbness in left arm and his left side.

The Administrative Law Judge concludes that claimant's testimony about his pain and numbness in the left side is credible and profound, 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 MS and the left-sided numbness secondary to it. Claimant currently performs two other activities of daily living and has an active social life with his mother. Claimant drives occasionally.

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 physically able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P application, based on 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 disability requirements under PEM 260.

Accordingly, the department's denial of MA-P application is, hereby, **AFFIRMED**.

/s/

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

Date Signed: July 22, 2009

Date Mailed: July 23, 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 mailing date of the rehearing decision.

JWS/sd

cc:

