

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: 2009-10873
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 22, 2009
Sanilac 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 April 22, 2009, in Sandusky. Claimant personally appeared and testified under oath.

The department was represented by Linda Courter (General Services Program Manager).

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 an MA-P/retro/SDA applicant (November 3, 2008) and was denied by SHRT (February 4, 2008) based on claimant's ability to perform unskilled one-handed light work. Claimant requests retro MA for August, September, and October 2008.

(2) Claimant's vocational factors are: age—48; education—high school diploma; post high school education—none; work experience—operated a machine for auto carpet factory, janitor, bank paper mover, and auto parts machine operator.

(3) Claimant has not performed substantial gainful activities since 9/2008 when he was employed as a machine operator at an auto carpet factory.

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

- (a) Herniated disc;
- (b) Fell from tree while hunting (██████);
- (c) Chronic headache;
- (d) Right shoulder dysfunction;
- (e) Four fingers of left hand amputated (██████);
- (f) False fingernails growing on amputated fingers.

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

OBJECTIVE MEDICAL EVIDENCE (████████████████████)

SHRT decided that claimant was able to perform unskilled one-handed work. SHRT evaluated claimant's eligibility using the SSI Listings published at 20 CFR 404, Subpart P, and Appendix. SHRT decided the claimant does not meet any of the applicable listings. SHRT denied disability based on 20 CFR 416.967(b) due to claimant's ability to perform unskilled light one-handed work.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping (sometimes),

vacuuming, laundry (needs help) and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces. Claimant received in-patient hospital care in [REDACTED] to treat the self amputation of four fingers on his left hand.

(7) Claimant does not have a valid driver's license and does not drive an automobile.

Claimant is not computer literate.

(8) The following medical reports are persuasive:

(a) An [REDACTED]' narrative report was reviewed.

The physician provided the following background:

Claimant states that he sustained an amputation to the PIP joints in [REDACTED]. He was using a table saw, cutting and trimming some antlers to install on a scalp when he sustained a laceration to the second to fifth digits of his left hand. He was not able to have them reattached as the bone was apparently involved as well and was turned into powder. Since that time, he has been treated supportatively and is on Oxycodone for pain, Tylenol #3 and Norco PRN. He is not undergoing any therapy. He mostly complains of dyesthesia in the digits of his left hand as well as phantom pain in the digits.

Claimant also relates a 'history' of carpal tunnel disease and bilateral elbow pain over the past three years. He attributes this to overuse. He has had ulnar nerve transporting to the left arm as well as bilateral carpal tunnel releases to both hands. He is not undergoing any treatment at the present other than the above.

Claimant states that he has not worked since the time of his accident. He used to work at [REDACTED]. He states that they have not been able to release him to go back to work because he continues to have restrictions. He currently lives by himself as he is currently separated and lives in a trailer home. He is able to do his activities of daily living, but has difficulty doing fine manipulative tasks such as buttoning and tying shoes with his left hand. He now mostly goes for walks and watches television. He states that he does require help mowing the law. He does not drive because of his pain medications. He denies any problems sitting, standing or walking. He cannot lift anything more than ten pounds

with his left hand, per his physician and cannot do any repetitious manipulation.

* * *

The consulting physician provided the following conclusions:

- (1) Carpal tunnel disease, ulnar neuropathy and amputation of the digits to the left hand. He now has phantom pains to the digits to the left hand. He also has continued carpal tunnel sheath tenderness and elbow pain due to chronic ulnar nerve irritation. There was no myelopathy or neuropathy related to his carpal tunnel disease, but again he did have pain with palpitation in the distal digits due to the acuteness of his injury. At this point, he had difficulty doing any manipulative tasks and one was unable to button. This may improve over time, Lyrica or Neurotin may provide him with additional relief. He is on narcotic pain management at present.

In regards to his right hand, he does have some diminished grip strength and range of motion and much of this appears to be due to chronic tenosynovitis. He did have some continued carpal tunnel nerve irritation, but again no evidence of numbness to date. At this point, his current prognosis is quite guarded to poor, due to his lack of remediability, especially with the left hand.

* * *

- (9) Claimant does not allege a severe mental impairment as the basis for his disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49D or DHS-49E to establish 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 consulting physician's report provides the following diagnoses: carpal tunnel disease; ulnar neuropathy; and amputation of four digits to the left hand. The consultative physician did not state that claimant was totally unable to work. Medical evidence does establish that claimant is unable to perform jobs which require manual dexterity of both

hands. Claimant's lack of fingers on the left hand also prevents him from lifting and carrying on a repetitive basis.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application; 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.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform simple unskilled one-handed light work.

The department reviewed claimant's impairments using the SSI Listings at 20 CFR 404, Subpart P, and Appendix.

The department denied disability based on claimant's ability to perform light one-handed work per 20 CFR 416.967(b).

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 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 earning substantial income, he is not eligible for MA-P/SDA.

SGA is defined as the performance of the 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 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 and duration.

Claimant must establish an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all basic work activities. 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).

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 machine operator for an automobile carpet factory. This work required two hands.

Since claimant no longer has the use of his left hand, he is unable to return to his previous job as a machine operator for an automobile carpet factory.

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 a preponderance of the medical/psychiatric 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 the amputation of four fingers of his left hand and ulnar neuropathy and carpal tunnel syndrome. While it is clear from the medical evidence that claimant has many functional limitations arising out of the amputation of his four left fingers, this does not prevent him from doing one-handed sedentary work.

Finally, the claimant testified that a major impediment to his return to work was his elbow pain, left hand pain, and carpal tunnel pain. 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 combination of impairments. Currently, claimant performs many activities of daily living, has an active social life with his brother, and currently operates his household with a minimum of outside assistance.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled,

one-handed sedentary work (SGA). Claimant is able to return to one-handed work, notwithstanding the loss of four fingers on his left hand. In this capacity, claimant is able to work as a ticket taker for a theater, as a parking lot attendant and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/SDA application, based on Step 5 as 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: April 27, 2009

Date Mailed: April 28, 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.

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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/tg

cc:

