

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: 2009-12344
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
Berrien 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 on July 1, 2009, in Benton Harbor. Claimant personally appeared and testified under oath.

The department was represented by Joanna Adams (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on July 1, 2009.

Claimant waived the timeliness requirement so 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) 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 (July 7, 2008) who was denied by SHRT (February 19, 2009) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age--43; education--9th grade, post-high school education--received certificate as a janitorial technician in prison; work experience--line worker in a factory.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a line worker in a factory. Claimant did not know the date of his last work.

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

- (a) Anger management problems;
- (b) Unable to sit for long periods;
- (c) Back/shoulder/neck pain;
- (d) Eye dysfunction;
- (e) Numbness in both feet;
- (f) Diabetes.

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

OBJECTIVE MEDICAL EVIDENCE (February 19, 2009)

SHRT decided that claimant was able to perform unskilled, medium work. SHRT evaluated claimant's impairments using all SSI listings at 20 CFR 404, Subpart P, Appendix I. SHRT decided claimant does not meet any of the applicable SSI listings. SHRT denied disability based on Med-Voc Rule 203.28 as a guide.

(6) Claimant lives with his girlfriend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant did not receive hospital care in 2008 or 2009.

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

(8) The following medical records are persuasive:

- (a) A [REDACTED] psychological report was reviewed. The [REDACTED] presented the following background:

When asked why he was applying for disability benefits, claimant states, 'I was getting SSI and they said they felt I was able to go back to work. I said I was having the same problems. I've got polymyositis. They said it was something like lupus. It's where your muscles hurt. I've got diabetes. I had surgery done on my eyes twice. Sometimes I have trouble seeing. My feet hurt all the time, so I have trouble walking.' Claimant states that he was diagnosed with polymyositis 20 years ago prior to this evaluation. He states that he was diagnosed with diabetes four years ago prior to this evaluation and states that he has had problems with his eyes for seven or eight years.

* * *

The Ph.D. psychologist provided the following mental status evaluation:

Claimant alone to this appointment and was 45 minutes early. He states that he is 6' 1" tall and weighs 260 pounds. His posture and gait were normal, he was adequately mannered, and his clothing and hygiene were appropriate for the situation. Claimant appeared to be attentive throughout his evaluation and rapport was adequately established by this individual.

* * *

The psychologist provided the following DSM diagnoses:

AXIS I--No diagnosis;
AXIS V--Current GAF 57.

- (b) A May 7, 2009 DHS-49D was reviewed. The psychologist states that claimant has an AXIS V--GAF score of 57.
- (c) A May 7, 2009 mental residual functional capacity assessment was reviewed. The psychologist states that claimant is moderately limited in the ability to perform activities within a schedule, the ability to sustain an ordinary routine, the ability to accept instructions and respond appropriately, and the ability to get along with co-workers. The psychologist did not report any marked limited skill sets.
- (d) An October 9, 2008 family practitioner health report was reviewed. The physician reports the following diagnoses: hypertension/uncontrolled, diabetes mellitus II, dyslipidemia and tachycardia. The internist did not report that claimant was totally unable to work.

(9) The probative psychiatric evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions. The DHS-49E states that claimant has no markedly limited skill sets. Also, the Ph.D. psychiatrist was unable to provide claimant with a diagnosis.

(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 [REDACTED] (dated [REDACTED]) showed the following diagnoses: hypertension/uncontrolled, diabetes mellitus II, dyslipidemia and tachycardia. The internist did not report that claimant is totally unable to work.

(11) Claimant's SSI benefits were closed by the Social Security Administration on June 28, 2008 because claimant was no longer disabled.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks claimant is able to perform unskilled light work.

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 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 disabled for MA-P/SDA purposes.

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 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, has existed for at least 12 months, and totally prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SA, 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.

However, SHRT did review claimant's eligibility using all SSI listings at 20 CFR 404, Subpart P, Appendix. Claimant does not meet any of the applicable 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 an assembly line worker in a factory. This work was medium/heavy work.

The medical evidence of record establishes that claimant has muscle disorder, diabetes and sleep apnea. Claimant also reported an inability to sit for long periods along with chronic neck/back/shoulder pain. He also has eye dysfunction and is not able to focus normally.

The medical evidence of record shows that claimant has a combination of impairments which preclude him from performing heavy lifting, standing for an entire 8-hour shift and operating dangerous machinery.

Since claimant is no longer able to perform assembly line work in a factory, he is unable to return to his previous work. 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 the medical evidence in the record, that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on anger--control issues. The [REDACTED] report [REDACTED] contains the following DSM diagnosis: AXIS I--No diagnosis; AXIS V/GAF--57 (moderate symptoms). The consulting psychologist did not report that claimant is totally unable to work. Also, the DHS-49E shows that claimant is only moderately limited in 4 out of 20 skill sets. The DHS-49E shows that claimant does not have a severe mental impairment that impedes his functional capacity.

Second, claimant alleges disability based on the inability to sit for long periods, eye dysfunction, bilateral foot numbness and diabetes. Although claimant's combination of impairments precludes him from heavy lifting and constant standing, the medical evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to his return to work is his chronic back/neck/shoulder 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 claimant's combination of impairments. Claimant performs a significant number of activities of daily living, has an active social life with his girlfriend and drives an automobile 30 times a month.

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 able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would afford claimant a sit-stand option.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under 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/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: October 5, 2009

Date Mailed: October 5, 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/cv

cc:

[REDACTED]