

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: 2009-14451
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2009
Livingston 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 May 19, 2009 in Howell. Claimant personally appeared and testified under oath.

The department was represented by Brenda Bolek (AP Supervisor) and Veronica Maxson (ES).

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for 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 SDA applicant (November 19, 2008) who was denied by SHRT (March 9, 2009) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age—51; education—high school diploma, post-high school education—attended [REDACTED] for one semester and [REDACTED] for one semester [REDACTED]); work experience—factory work through the [REDACTED], farm hand for uncle.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since March 2008 when he was employed by [REDACTED] to perform factory labor.

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

- (a) Status post rotator cuff surgery in [REDACTED];
- (b) Currently receiving physical therapy for right shoulder/rotator cuff injury/surgery;
- (c) No strength in right arm;
- (d) Unable to perform basic work activities with right arm.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 9, 2009)

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's right ankle sprain (2008) and his arthroscopic rotator cuff surgery in 2009. SHRT decided that claimant does not meet any of the Listings at 20 CFR 404, Subpart P. SHRT denied disability based on 20 CFR 416.909 due to lack of severity and duration.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, vacuuming and grocery shopping (needs help).

Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant wears a sling on his right arm when he is walking. Claimant removes his sling when he is home.

Claimant had right rotator cuff surgery in 2009. Claimant is right-handed.

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

Claimant is not computer literate. Claimant has attended [REDACTED] and

[REDACTED] (majoring in [REDACTED]) for one semester each.

(8) The following medical records are persuasive:

(a) A February 19, 2009 shoulder surgery/first post-op report was reviewed.

The surgeon provided the following background.

Claimant returns status post a right shoulder arthroscopic subacromial decompression, arthroscopic rotator cuff repair-massive, AC joint resection, biceps tendon (long head) release. Post op one week.

Claimant reports the pain level is: moderate.

IMPRESSION: Doing well.

PLAN: I discussed the nature of the surgery with claimant, including current and near-future restrictions. A prescription for physical therapy was also given.

(b) A January 2, 2009 orthopedic report was reviewed

This 51-year-old male presents with a history of left shoulder pain, which began 15 years ago. Claimant originally injured his shoulder in a motor vehicle accident in 1994. He felt his shoulder pushed backwards forcefully. He then reinjured the shoulder in 2005, when he was lifting a heavy cement block overhead. He says the pain is similar in nature, but not as severe as the pain in the right shoulder.

The surgeon provided the following impression:

- (a) Impingement syndrome (left);
- (b) Rule-out rotator cuff tear;

(c) AC joint arthritis.

(c) A November 18, 2008 orthopedic assessment was reviewed.

The orthopedic surgeon provided the following impression:
right shoulder rotator cuff tear.

Patient should remain off work until January 15, 2009.

Comments: Claimant to remain off work until he is
evaluated again after surgery on [REDACTED].

(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 a DHS-49E to show his mental residual functional capacity.

(10) The probative medical evidence does establish an acute right shoulder rotator cuff tear for the period November 18, 2008 to January 15, 2009. Claimant's orthopedic surgeon issued an [REDACTED] for the period [REDACTED] based on claimant's right shoulder rotator cuff tear.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to SDA based on the impairments listed in paragraph #4, above. Claimant thinks he is entitled to SDA eligibility because his physician placed him on off-work status for the period of November 2008 through January 2009.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform normal work activities. The department evaluated claimant's impairments using the SSI Listings in 20 CFR 404, Subpart P.

The department decided that claimant does not meet any of the applicable Listings. The department provided the following comments:

Claimant had a right ankle sprain in 2008. In 2009 claimant had arthroscopic surgery for subacromial decompression, massive rotator cuff repair, AC joint resection and bioceps tendon release. His first post op-visit showed the wound was clean and dry and he was neurovascularly intact.

NOTE: Claimant stated at the hearing that he would file a new application for SDA benefits based on his February 2009 right rotator cuff surgery.

LEGAL BASE

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).

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 SDA purposes. PEM 261. "Disability," as defined by 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 SDA.

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, or has existed for 90 days and totally prevented all basic work activities. 20 CFR 416.909.

Also, to qualify for 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.

However, SHRT evaluated claimant's eligibility based on all of the Listings at 20 CFR 404, Subpart P. SHRT determined 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's last work was factory work under the auspices of [REDACTED]. Claimant has also worked as a cement finisher and as a farm hand.

Based on the medical evidence of record, claimant is not able to perform the heavy lifting required by factory work, cement finishing or farm work based on his right rotator cuff tear.

Claimant is unable to return to his previous work.

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 the medical/psychological evidence in the record, that his combined impairments meet the department's definition of disability for SDA purposes.

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

Second, claimant alleges disability based on his doctor's work release in November 2008 and his status post right rotator cuff surgery in February 2009.

The medical evidence of record establishes that claimant was disabled, based on his doctor's off-work orders for the period November, December 2008 and January 2009.

The sequeli and complications arising out of claimant's February 2009 rotator cuff surgery are not clear at this point. Claimant indicated that he will be applying for SDA benefits in the very near future to cover his February 2009 right rotator cuff surgery.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is entitled to SDA benefits for a closed period (November and December 2008 and January 2009).

With respect to claimant's February 2009 rotator cuff surgery, claimant plans to reapply for SDA benefits to cover this impairment.

Consistent with this analysis, the department incorrectly denied claimant SDA for a closed period (November 2008 through January 2009).

With respect to claimant's February 2009 right rotator cuff surgery, the medical evidence does not currently permit a disability finding favorable to claimant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does meet SDA requirements for the period November 2008 through January 2009.

Accordingly, the departments denial of claimant's SDA application for a closed period of benefits (November 2008 through January 2009) is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: September 18, 2009

Date Mailed: September 21, 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:

[REDACTED]

[REDACTED]