

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: 2009-14945
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3, 2009
Kent 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 June 3, 2009, in Grand Rapids. The claimant personally appeared and testified under oath.

The department was represented by Mary Major (FIM).

By agreement of the parties, the record closed on June 3, 2009.

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 10, 2008) who was denied by SHRT (March 18, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements, under 20 CFR 416.909. Claimant requested retro MA for July, August, and September 2008.

(2) Claimant's vocational factors are: age--26; education--high school diploma; post high school education--two semesters at [REDACTED] (construction management major); work experience--construction worker/spray painter.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a construction worker/spray painter in 2008.

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

- (a) Status post wound to right hand;
- (b) Status post finger surgery on right hand index finger;
- (c) Status post finger injury (10/17/2008);
- (d) Normal use of left hand;
- (e) Unable to write with left hand;
- (f) Right hand in cast; and
- (g) Right hand dominant.

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

OBJECTIVE MEDICAL EVIDENCE (March 18, 2009)

SHRT decided that claimant did not establish the required duration for his right hand injury. SHRT evaluated claimant's eligibility using all listings in 20 CFR 404, Subpart P. SHRT decided that claimant's stab wound to his right index finger with partial flexor tendon injury did not prevent claimant from performing all types of work for 90 days or more.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing (needs help), light cleaning, grocery shopping (sometimes). Claimant currently uses a right arm brace. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant was not hospitalized as an in-patient in 2008 or 2009. He had one outpatient hand surgery in 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately seven times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

- (a) December 5, 2008 Medical Examination Report (DHS-49) was reviewed. The physician stated that claimant has a temporary disability and is able to return to work pending an evaluation in three weeks.

The physician states that claimant is unable to work for an unknown period of time. The physician also states that claimant must wear a splint. The opinion of the hand surgeon is not consistent with the great weight of the evidence in the record and will not be given great weight.

- (b) An [REDACTED] Examination was reviewed.

The physician provided the following history: Claimant is a 25-year-old, right-hand-dominant gentleman who suffered stab wounds to both of his hands when he was assaulted in a house break in. The original injury occurred on October 17, 2008. He was evaluated and treated at [REDACTED] by the Emergency Department. He apparently returned there yesterday because of limited and painful motion involving his right index finger. All of the other injuries have done well. He complains of limited motion, swelling, and an inability to fully flex his finger and lift.

The physician recommended surgical exploration and debridement or repair of claimant's partial flexor tendon injury, right index finger. Claimant received surgery for his right index finger injury on October 17, 2008.

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant does not allege a mental impairment as the basis for his disability.

(10) The probative medical evidence, standing alone, does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions. The medical records do show that claimant received a stab wound to his right index finger in October 2008. As a result, claimant had surgery on his right index finger and was unable to use it for several months.

(11) Claimant thinks he is eligible for MA-P/SDA because he was unable to use his right index finger for several months.

(12) It is unknown whether claimant has applied for SSI benefits from Social Security Administration (SSA).

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is due to his October 2008 right index finger stab wound he is unable to perform any work.

DEPARTMENT'S POSITION

The department thinks that claimant's stab wound to the right index finger on October 2008, with partial flexor tendon injury, does not prevent claimant from performing all types of work for 90 days or more.

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).

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/BEM 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 significant duties over a reasonable period of time for pay. PEM/BEM 260, pages 8 and 9.

Claimants, who are working and performing Substantial Gainful Activity (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.

Therefore, 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 existed, or be expected to exist, 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, the claimant must satisfy both the gainful work and duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit his physical or mental ability to do basic work activities, he does not meet the Step 2 criteria. 20 CFR 416.920(c). SHRT found that claimant meets the 90-day/12-month duration requirements using the *de minimus* test.

Therefore, claimant does not meet the Step 2 eligibility test.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

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 painter on a construction project. Claimant's work as a painter required him to have excellent manual dexterity in his right hand in order to operate the spray painting equipment correctly. Since claimant's right hand has been injured, due to a stab wound, he is unable to operate the spray painting machinery which he previously used on construction projects.

Therefore, claimant meets 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 [REDACTED], published by the [REDACTED]. [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Claimant is unable to perform his previous work as a spray painter due to his right hand injury. Notwithstanding claimant's right hand limitations, claimant is able to perform simple unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to his return to work was his right hand pain due to the stab wound. 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 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 right hand pain and dysfunction. Claimant currently performs several activities of daily living, drives an automobile seven times a month and is computer literate. This means that claimant is able to perform unskilled sedentary 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/BEM 260/261. Claimant is not disabled for MA-P/SDA purposes based on Step 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: August 17, 2010

Date Mailed: August 18, 2010

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 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:

