

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: 2009-20544
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 25, 2009
Tuscola 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 25, 2009, in Caro. Claimant personally appeared and testified under oath.

The department was represented by Karen Southgate (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 the month of October 2008?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for the month of October 2008?

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 (January 5, 2009) who was approved by SHRT for MA and retro MA effective November 28, but denied coverage for October 2008. Claimant requests retro MA for October 2008 based on the decision by the Social Security Administration to award him SSI/RSDI benefits with a disability onset date of November 2008.

(2) Claimant's vocational factors are: age--44; education--high school diploma, post-high school education--truck driving school and a [REDACTED] license; work experience--long-haul truck driver for [REDACTED], also drove trucks for a gravel company and for other freight lines.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since [REDACTED], when we was a truck driver for [REDACTED].

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

- (a) Degenerative disc disease;
- (b) Status-post laminectomy (June 2008);
- (c) Bilateral leg dysfunction/numbness;
- (d) Difficulty walking;
- (e) Unable to stand for long periods;
- (f) Unable to lift more than 5 pounds;
- (g) Diabetes.

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

OBJECTIVE MEDICAL EVIDENCE (May 8, 2009)

The [REDACTED] approved claimant for benefits in 3/2009. At this point, it is not clear whether claimant has been put into payment status or not, as his claim is being reviewed by [REDACTED]. However, it is anticipated that he will be placed into payment status.

Therefore, MA-P/retro MA-P is approved effective November 2008.

* * *

(6) Claimant lives with his parents and his adult son and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing (sometimes), laundry (sometimes) grocery shopping (needs help). Claimant does not use a cane, a walker, a

wheelchair or a shower stool. Claimant wears braces on both his wrists (for carpal tunnel syndrome) approximately 28 days a month. Claimant did not receive in-patient hospital care in 2008. He was hospitalized in June 2009 for a laminectomy.

(7) Claimant has a valid [REDACTED] license and drives an automobile on a daily basis.

Claimant is computer literate.

(8) The following medical records are persuasive:

(a) An [REDACTED] of the lumbar spine report was reviewed.

The radiologist provided the following impressions:

- (1) Moderate-sized right paracentral ‘extension’ type intravertebral disc herniation causing compression on the adjacent right S-1 nerve root. The herniated disc is also extending towards right lateral recess causing narrowing.
- (2) Bulging of the intravertebral disc at L4-L5, causing mild right neuroforamen narrowing.

* * *

(9) Claimant does not allege disability based on a mental impairment. There are no recent psychological reports in the record. Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that he has degenerative disc disease and that he has received SSI/RSDI benefits effective November 2008. However, the MRI report from [REDACTED] shows an “excursion” type intravertebral disc herniation causing compression on the adjacent right S1 nerve root. The herniated disc is also “extending towards the right lateral recess causing narrowing.”

(11) The medical evidence of record shows that the degenerative disc disease impairment, which was the basis for the SSI/RSDI approval effective November 2008, is a pre-existing condition which was also present in October 2008.

(12) Claimant currently receives SSI/RSDI benefits based on his degenerative disc disease and other exertional impairments.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P benefits based on the determination made by the Social Security Administration that claimant is eligible for SSI/RSDI, effective November 2008. Claimant thinks that the [REDACTED] report establishes the existence of his degenerative disc disease and L4-L5 herniation in October 2008.

DEPARTMENT'S POSITION

The department thinks that claimant is eligible for MA-P effective November 2008.

The department did not approve claimant for retro MA for October 2008, and did not explain the reasons for its refusal to approve benefits for the month of October 2008.

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 disabled for MA-P 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 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, has existed for at least 12 months, and totally prevents 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. Claimant does not allege disability based on the Listings.

SHRT evaluated claimant's eligibility based on the SSI listings and determined that he was eligible effective November 2008.

Therefore, claimant meets the Step 3 disability test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked as a long-haul truck driver. This was sedentary work.

The medical evidence of record establishes that claimant has an acute herniated disc at L4-5, which required surgery.

Since claimant is currently recovering from his June 2008 laminectomy, he is not able to return to his previous work as a truck driver.

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

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

Second, claimant alleges disability based on a combination of impairments (lumbar disc herniation, degenerative disc disease, diabetes and carpal tunnel syndrome). Claimant's degenerative disc disease resulted in a herniated disc at L4-5, which required surgery in June 2008. Claimant is totally unable to work, based primarily on his recent disc surgery.

Third, claimant testified that a major impediment to his return to work is his spinal pain secondary to degenerative disc disease. The Administrative Law Judge concludes that claimant's testimony about his pain is profound and credible.

In short, the Administrative Law Judge is persuaded that claimant was totally unable to work in October 2008, based on his degenerative disc disease, in combination with his other impairments.

Based on this analysis, the department **incorrectly denied** claimant MA-P application for October 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the MA-P disability requirements for October 2008, under PEM 260.

Accordingly, the department's denial of claimant's October 2008 MA-P application is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: September 28, 2009

Date Mailed: September 29, 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:

