

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: 2009-20742
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 8, 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 July 8, 2009 in Sandusky. Claimant personally appeared and testified under oath.

The department was represented by Linda Courter (Program Supervisor).

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)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for year (MA-P)?

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 applicant (December 29, 2008) who was denied by SHRT (May 15, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—25; education—high school diploma; post high school education—one semester at [REDACTED] ([REDACTED]). Work experience—truck driver (long haul and short haul).

(3) Claimant has not performed substantial gainful activity (SGA) since November 2007.

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

- (a) Nerve damage on left side;
- (b) Fluid on left hip;
- (c) Arthritis in left knee;
- (d) Spinal dysfunction;
- (e) Nerve damage on left foot;
- (f) Status post motorcycle accident (2005);
- (g) Sleep dysfunction;
- (h) Obesity.

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

OBJECTIVE MEDICAL EVIDENCE (May 13, 2009)

X-rays, dated 2/2008 of the lumbar spine, left hip and left foot were normal (pages 36-37). MRI, dated 4/2008 showed no definite evidence of Labral tear (page 13).

On exam 8/2008, claimant was 73 inches tall and 441 pounds. His Body Mass Index (BMI) was 58.1. He had tenderness to palpitation of the lumbar area. Some paravertebral muscle spasms were noted. Range of motion of the back was limited due to pain. Straight leg raise was negative. No sensory, motor or vascular deficit in the lower extremities. There were no focal, neurological abnormalities noted (page 28).

ANALYSIS:

Claimant has chronic pain and is obese at 441 pounds. He has a BMI of 58.1. He has some tenderness and some muscle spasms in the back. But there were no neurological abnormalities noted. Claimant is limited by his weight, but would be able to do light work.

* * *

(6) Claimant lives with his parents and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing (sometimes), light cleaning (sometimes), vacuuming (sometimes), laundry and grocery shopping. Claimant uses a cane approximately ten times a month. He uses a shower stool approximately five times a month. Claimant does not use a walker or a wheelchair. He does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

(7) Claimant does not have a valid drivers' license and does not drive an automobile. Claimant is computer literate.

(8) The following medical reports are persuasive:

(a) [REDACTED]
Report was reviewed.

The physician provided the following background:

Claimant is here to discuss his pain management. Claimant Has been using a T.E.N.S. Unit at home and it has been helpful. Claimant states his breakthrough pain has been more frequent and intense.

The physician provided the following assessment:

- (1) Left knee pain;
- (2) Popliteal ulcer;
- (3) Cystic acne;
- (4) Degenerative disc disease.

(b) On [REDACTED]
Report was reviewed.

The physician provided the following background:

Claimant states that physical therapy has recently flared up his back again. Claimant is getting pain under his shoulder blade. Claimant wants to continue with physical therapy, but is hurting worse. Claimant has had to take a few extra Norco after physical therapy. The claimant is doing physical therapy four times per week with [REDACTED].

* * *

The physician provided the following assessment:

- (1) Degenerative back disease;
- (2) Thoracic back pain.

* * *

(9) Claimant does not allege disability based on a mental impairment. Claimant did not submit any clinical assessments of his psychological condition. Claimant did not provide a DHS-49D or 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. Claimant testified that he has nerve damage in his left foot, fluid on his left hip, arthritis in his left knee, degenerative disc disease, status post motorcycle accident (2005), sleep dysfunction and obesity.

(11) A recent medical examination report provided the following assessment: (1) left knee pain; (2) Popliteal ulcer, cystic acne, and degenerative disc disease. Claimant's physician did not state that claimant was totally unable to work. However, claimant has a limited ability to lift and stand.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied claimant's SSI application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P based on the impairments listed in Paragraph 4, above.

DEPARTMENT'S POSITION

The department thinks that claimant's impairments do not meet/equal the intent or severity of the Social Security Listing.

The department notes that the medical evidence of record shows claimant retains the capacity to perform a wide range of light work. In lieu of a detailed work history, claimant will be returned to other work.

Finally, based on claimant's vocational profile [younger individual, high school education and history of unskilled and semi-skilled work], MA-P was denied using Med-Voc Rule 202.20 as a guide.

* * *

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 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, the 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 impairments using the SSI Listings. SHRT decided that claimant does not meet any 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 last worked as a long-short haul truck driver. This work was light/medium work.

The medical evidence of record establishes that claimant has difficulty standing and sitting due to degenerative disc disease.

Since claimant is no longer able to perform work which requires continuous sitting, such as truck driving, he is unable to return to his previous position. 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 evidence in the record that his combined impairments meet the department's definition of disability for MA-P purposes.

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

Second, claimant alleges disability based on back dysfunction, left hip dysfunction, left foot dysfunction, sleep dysfunction and obesity. A recent [REDACTED]

Report (August 25, 2008) provides the following assessment:

- (1) Degenerative disc disease;
- (2) Thoracic back pain.

Claimant's physician did not state that claimant was totally unable to work.

Third, the claimant testified that a major impediment to his return to work was his shoulder, back, hip and leg pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P 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. Claimant performs a significant number of activities of daily living, has an active social life with his parents and is computer literate.

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 give claimant a sit-stand option.

Based on this analysis, the department correctly denied claimant's MA-P 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 disability requirements under PEM 260.

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

SO ORDERED.

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

Date Signed: October 30, 2009

Date Mailed: November 2, 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 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:

