

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: 2009-255
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 4, 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 February 4, 2009 in Grand Rapids. Claimant personally appeared and testified under oath.

The department was represented by [REDACTED].

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) 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/SDA applicant (July 3, 2008) who was denied by SHRT (October 7, 2008) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: [REDACTED] oma; post-high school education—none; work experience—conveyor operator for [REDACTED], assembly line worker for [REDACTED], assembly line worker for industrial containers.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2008, when he worked as a conveyor operator.

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

- (a) Status post hit and run victim (motor vehicle accident), [REDACTED];
- (b) Status post amputation of third finger on left hand;
- (c) Unable to move fingers four and five of the left hand.

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

OBJECTIVE MEDICAL EVIDENCE [REDACTED]

SHRT decided that claimant is able to perform normal work activities.

SHRT decided that claimant's impairments lacked duration under 20 CFR 416.909.

SHRT decided that claimant's left hand injury, and amputation of the third finger of his left hand does not preclude all work activity.

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs):

Presently needs help bathing (needs help), light cleaning, vacuuming, laundry (needs help) and grocery shopping.

Claimant does not use a cane or walker or a wheelchair, or a shower stool. He does not wear braces on his neck, back, hands or legs. Claimant received inpatient hospitalization services in [REDACTED] to obtain treatment for injuries sustained in a motor vehicle/hit and run accident in June 2008.

(7) Claimant does not have a valid driver's license, claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] Medical Examination Report (DHS-49) was reviewed.

The upper extremities surgeon provided the following history:

Patient hit by a car and dragged—left hand degloving injury with amputation at left middle finger. Left radial collateral ligament of small finger PIP joint, K-wire fixation of the proximal interphalangeal joint of left small finger. Repair of left ring finger nail bed was split. Full thickness nail bed graft.

The surgeon provided the following work limitations: Claimant is not able to lift any weight. Claimant can stand/walk about six hours in an eight-hour day. He can sit about six hours in an eight-hour day. He has normal use of his right hand. He has normal use of his feet/legs.

The surgeon reports that claimant is unable to do two-handed work.

(9) There is no probative psychological evidence in the record to establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. Although claimant suffered severe

chest injuries in the motor vehicle accident in June 2008, the condition has been successfully treated with surgery. The claimant's left middle finger was amputated and he had major surgery on the fourth and fifth fingers of his left hand which now have only minimal use. The upper extremity surgeons reported that claimant is unable to do two-handed work. Obviously, he is severely limited in his ability to lift large heavy objects. Apart from claimant's left hand impairment, there is no medical evidence in the record to establish a severe disabling physical condition at this time.

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

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 that claimant has not established an impairment which meets the severity and duration requirements under 20 CFR 416.909.

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 does 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 is 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 consideration of all factors in each different case.

STEP #1

The issue at Step 1 is whether claimant is performing Substantial Gainful Activity (SGA). The claimant is working and is 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. Claimant's who are working, are 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, the 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 that he has an impairment which is expected to result in death, has lasted for 12 months and totally prevents all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the 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.

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 a conveyor operator at [REDACTED]. This was light work. The medical evidence of record establishes that claimant has made a good recovery from the [REDACTED] hit and run motor vehicle accident. However, as a result of the injuries suffered, a result of the injury suffered, the third finger of claimant's left hand was amputated and extensive surgery was performed on fingers four and five. As a result, claimant does not have the full use of his left hand. Claimant's left hand injuries prevent him from lifting heavy objects. Since claimant's previous work as a conveyor operator required the ability for medium work, he 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 MA-P/SDA purposes.

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

Second, claimant alleges disability based on the amputation of the middle finger of his left hand and the dysfunction of the four and fifth fingers of his left hand. The left hand injuries which claimant sustained in [REDACTED] preclude him from lifting heavy amounts. However, claimant's left hand injuries do not preclude all employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his injuries to the third, fourth, and fifth fingers of his left hand. Claimant currently performs several activities of daily living and has an active social life with his mother.

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 physically able to work as a ticket taker for a theater, as a parking lot attendant, as a greeter at [REDACTED], and as a telemarketing representative.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on 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: February 17, 2009

Date Mailed: February 18, 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

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cc:

