

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: 2009-26023
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 7, 2009
Saginaw 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, an in-person hearing was held on October 7, 2009. Claimant personally appeared and testified under oath.

The department was represented by Connie Herman (ES).

Claimant requested additional time to submit new medical evidence. The new medical evidence was mailed to the State Hearing Review Team (SHRT) on October 8, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge made the final decision below.

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 (February 17, 2009) who was denied by SHRT (June 25, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age--55; education—high school diploma, post-high school education--none; work experience—employed as a representative for a tool sharpening company, process server for a law firm.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006, when he was a representative for a tool sharpening company.

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

- (a) Chronic low back pain;
- (b) High blood pressure (HNT);
- (c) Degenerative disc disease;
- (d) Heart disease;
- (e) Status-post laminectomy (April 2009).

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

OBJECTIVE MEDICAL EVIDENCE (June 25, 2009)

The department thinks that claimant's medical evidence is insufficient to establish a disability. The department recommended that claimant obtain a complete independent physical examination by an internist.

Claimant provided additional medical evidence as requested by SHRT.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning and grocery shopping. Claimant does not use a cane, a walker or a wheelchair. He uses a shower stool 30 times a month. He wears a brace on his back 10 times a month. Claimant was not hospitalized in 2008. In 2009, he was hospitalized for a laminectomy.

(7) Claimant has a valid driver's license and drives an automobile eight times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) An [REDACTED] narrative physical examination was reviewed.

The physician provided the following background:

Claimant is a 55-year-old white male who was seen here today for a [REDACTED] evaluation. He complains of heart attack with heart problems, back problems and depression.

Claimant has been depressed for the past two years. He says he lost his job and is unable to work. He feels tired and fatigued all the time and has no energy. He was given Prozac by the family doctor for two weeks, but stopped it because he did not find it was helping him. He says he needs psychiatric evaluation and attention because he is very depressed. He lost all his money that he earned in his life, and he has nothing left to live on. He has always worked honestly most of his life. At present he has been unemployed for two years. He has no suicidal thoughts or tendencies.

Apparently, he had an acute myocardial infarction in 2001 and was admitted to [REDACTED]. He was there for 8-9 days and had 3-vessel bypass surgery done by [REDACTED]. At that time, he was also found to have high blood pressure. He says he did very well until about 2005. Then, he started smoking again because his mother died at that time. Since then, he started having chest pain more often and he had a heart cath done in 2007 by [REDACTED] and was told about the three bypasses, two were completely blocked and one was open. He did not recommend any surgery, but advised

him to quit smoking, exercise and lose weight. He says he has chest pain once or twice a week and does not take nitroglycerine. He takes Bayer aspirin and the pain goes away in about two to three minutes. In the last year, he has taken only two nitroglycerine for chest pain. He feels fatigued and tired and short of breath all the time. He knows the shortness of breath is from smoking. He has not been able to walk. He is unable to walk more than a city block, and then his back hurts and he has to stop. He also feels tired and fatigued. He does not have any congestive heart failure as far as he knows, and he takes medications which include Captopril 25, Lopressor and Lipitor.

Apparently, he had extensive back surgery in the past; in the last 26 years he had four back surgeries. * * * The last surgery was done at [REDACTED]. He had decompression laminectomy at two levels. In April 2009, he was told it will take at least six months before he is able to do normal walking. Claimant says that his right leg numbness has gone away since the surgery, but his back pain is continuous. He has to take one to three Vicodin a day as well as Flexeril, one tablet twice daily. He is unable to walk more than a city block. He does not use a cane. He has good control of bowels and urine. He has difficulty bending, squatting, kneeling and going up and down stairs more than one flight.

The consulting physician provided the following conclusion:

After examination and no chart to review, it appears that this patient had myocardial infarction in 2001. He subsequently had a 3-vessel bypass surgery. A cardiac catheterization, done in 2007 showed two of the arteries are blocked completely and one is open. He was not recommended for bypass surgery, just medical management to quit smoking, exercise and watch his diet which he apparently is not doing. He has chest pains twice a month and they are relieved by aspirin. He also has a history of lumbar surgery for herniated discs and spinal stenosis at four different times, the most recent being April 2009. He has a significant reduction of motion of the lumbar spine. He is unable to walk more than a block due to his spinal stenosis. Even after the correction, he has difficulty in walking. He is also depressed due to lack of finances as well as not able to do his regular job. He may need a psychiatric consultation.

* * *

(9) Claimant alleges disability based on a mental impairment: depression. Claimant did not provide a clinical evaluation, by a psychiatrist or a Ph.D. psychologist, to establish his exact mental status. Also, claimant did not provide a DHS-49D or a DHS-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 reported a combination of impairments: chronic back pain, high blood pressure, degenerative disc disease, heart disease, and status-post spinal laminectomy (April 2009). However, the medical records do not establish a severe functional limitation which totally precludes all work activity.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied his application; claimant filed a timely appeal.

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 is able to perform normal work activities.

The department denied MA-P/SDA benefits because claimant failed to provide persuasive medical evidence of a disability.

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 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).

A statement by a medical source (MSO) that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the MA-P/SDA program.

20 CFR 416.927(e).

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 260/261. "Disability," as defined by MA-P/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 MA-P/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 medical/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. 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. 20 CFR 416.909.

Also to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Using the *de minimus* rule, claimant meets the severity and duration requirements and 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 impairments using the SSI listings and determined that claimant does not meet the requirements of the SSI listings at this time.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a sales representative for a tool sharpening company. Claimant's work as a sales representative was sedentary work. This work also required that claimant have the ability to walk long distances through plants, where he was providing technical assistance.

Since claimant has chronic back pain, he is unable to stand, walk, bend and lift, on a continuous basis as required by his previous employment as a tool sharpening representative.

Therefore, claimant has met his burden of proof to establish that he is unable to return to his previous work as a sales representative for a tool sharpening company.

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 mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental impairment: depression. Claimant did not provide any clinical evidence, from a psychiatrist or a Ph.D. psychologist to establish exactly what his current mental status is. Furthermore, claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity. For these reasons, claimant is not entitled to MA-P/SDA disability based on his mental impairments.

Second, claimant alleges disability based on heart dysfunction, chronic low back pain, high blood pressure, degenerative disc disease and status-post laminectomy (April 2009). The medical evidence of record shows that claimant has difficulty with fatigue and is unable to stand, walk, bend or lift for any significant time period. However, the medical evidence of record does not show that claimant's physical impairments severely limit his ability to perform normal work functions, other than standing, walking and lifting. The medical evidence does not preclude claimant from performing work activities which are sedentary in nature.

Third, claimant testified that a major impediment to his return to work is his chronic back pain. 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 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 currently performs several activities of daily living, has an active social life with his brother and sister and drives an automobile approximately eight times a month.

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] and other types of sedentary work. Because of the handicapper laws recently enacted in the United States, there are many jobs available for persons with handicaps similar to claimant's.

Consistent with this analysis, the department correctly denied claimant's MA-P 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: March 8, 2010

Date Mailed: March 8, 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 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/tg

cc:

A large black rectangular redaction box covering several lines of text in the distribution list.