

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: 2009-26131
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 4, 2009
Lapeer 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 in Lapeer on August 4, 2009. Claimant personally appeared and testified under oath.

The department was represented by Dianne Williams (Lead Worker).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on August 17, 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 (March 19, 2009) who was denied by SHRT (June 29, 2009) due to insufficient evidence. Claimant requests Retro-MA for December 2008 and January/February 2009.

(2) Claimant's vocational factors are: age—45; education—10th grade; post-high school education—none; work experience—forklift driver for [REDACTED], self employed lumberjack, forklift driver for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when he worked as a forklift driver for [REDACTED].

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

- (a) Status post back injury;
- (b) Anxiety.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 29, 2009)

Claimant has positive straight leg raising test. He has range of motion of the lower back.

Mental: Claimant alleged anxiety with no treatment.

ANALYSIS: The evidence in the file is inadequate to assess all of claimants' alleged impairments.

* * *

A history of substance abuse. The mental examination reported he was anxious with constricted affect. His thought process was logical and has poor insight. (pp. 34-36) He is not restricted in his activities of daily living. (pp 7-10).

(6) Claimant lives with his mother and father, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes). Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does wear a back brace approximately 16 times a month. Claimant did not receive inpatient hospitalization in 2008 or 2009.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is computer literate.

(8) The following medical records are persuasive:

- (a) A March 30, 2009 Medical Examination Report (DHS-49) was reviewed. The physician provided the following information: Current diagnosis low back pain, right leg pain and anxiety, herniated lumbar disc with radiculopathy.

The physician provided the following physical limitations. Claimant is able to lift less than 10 pounds occasionally. He is able to stand/walk less than 2 hours in an 8 hour day and sit less than 6 hours in an 8 hour day. Claimant is able to use his hands/arms for simple grasping and fine manipulating. But is unable to do reaching or pushing/pulling. Claimant is unable to operate foot controls with his feet/legs.

Note: the physician did not report that claimant is totally unable to work.

* * *

(9) The probative psychological evidence does not establish an acute (non-exertional) mental condition which totally prevents claimant from performing all customary work functions for the required period of time. Claimant did not provide a probative psychiatric/psychological report to establish his mental status. Also, claimant did not provide a DHS-49D or a DHS-49E to show 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. The reporting physician provided the following diagnoses: Herniated lumbar disc with radiculopathy. The treating physician reported that claimant is able to lift 10 pounds occasionally, stand/walk 2 hours in an 8 day and sit less than 6 hours in an 8 hour day. He can use his hands/arms for simple grasping and fine manipulating. He is unable to use his feet/legs to operate foot controls. **The reporting physician did not state that claimant is totally unable to work.**

(11) Claimant has not applied for SSI benefits from the Social Security Administration. Application for SSI is a prerequisite for SDA eligibility.

CONCLUSIONS OF LAW

Claimant thinks that he is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that the medical record is insufficient to establish a Listing Level mental/physical impairment.

The department requested that claimant provide additional information from a licensed physician.

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).

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 evidence of record shows 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 a continuous period of 12 months and prevents all basic work activities. 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).

Since the severity/duration requirement is *de minimus* requirement, claimant meets the Step 2 disability criteria.

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 forklift driver for [REDACTED]. This is sedentary work.

The medical evidence of record supports a conclusion that claimant is able to do sedentary work. The only limitation is that claimant is limited in maximum sitting time of 6 hours.

Since claimant is not able to operate a forklift for a continuous 8 hour shift, he is not able to return to his previous work.

Since claimant is unable to return to his previous 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 evidence in the record, that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental disorder: anxiety. There is no probative psychological evidence in the record to establish that diagnosis. Also, claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a herniated disc and radiculopathy. The physician who examined claimant did not say that claimant was totally unable to work. He did provide the following work limitations: Claimant cannot lift more than 10 pounds. He is unable to stand/walk more than 2 hours and unable to sit more than 6 hours. Claimant can use his hands/arms for simple grasping and fine manipulating. He is unable to do reaching-pulling. Claimant is not able to use his feet to operate foot controls. Also, claimant is unable to operate a forklift because he cannot use his legs to operate the foot controls.

During the hearing, claimant testified a major impediment to his return to work was his back pain secondary to his herniated disc. 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 combined impairments. Claimant currently performs 3 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 at a theatre, as a parking lot attendant, and as a greeter at [REDACTED]

Consistent with 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: March 22, 2010

Date Mailed: March 23, 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.

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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/sd

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