

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: 2009-27636
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 19, 2009
Oceana 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 August 19, 2009, in Hart. Claimant personally appeared and testified under oath.

The department was represented by Julian Castillo (FIM) and Juanita Estrada (ES).

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 (January 13, 2009) who was denied by SHRT (July 14, 2009) based on claimant's ability to perform unskilled light work.

(2) Claimant's vocational factors are: age--36; education--11th grade; post high school education--GED, two semesters at [REDACTED] (nursing major), one semester at [REDACTED] (nursing major); work experience-- [REDACTED] [REDACTED] (medical assistant), [REDACTED] (nurse assistant), [REDACTED] [REDACTED] (home health aide).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since July 2008 when he was a medical assistant for [REDACTED].

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

- (a) Status post back injury (2008);
- (b) Back dysfunction with chronic pain; and
- (c) Takes pain medications.

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

OBJECTIVE MEDICAL EVIDENCE (July 14, 2009)

An MRI of the lumbar spine done in 7/08 showed spinal stenosis at the L4-15 level (Page 56). The physical examination in 3/09 reported a limited range of motion of the lumbar, with normal motor strength and tone. His sensory was intact. He walked with a normal gait without assistance. He had normal grip strength. (Pages 66-68)

ANALYSIS:

The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing a wide range of light skilled work.

* * *

(6) Claimant lives alone in a camping trailer next to his parents' home. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, and dishwashing (sometimes), light cleaning (sometimes), laundry and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair, or shower stool. He does not wear braces. Claimant was not hospitalized in 2008 or 2009.

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

(8) The following medical records are persuasive:

(a) A [REDACTED] Report was reviewed. The consulting internist provided the following background:

CHIEF COMPLAINTS:

Ruptured disc at L4-L5, hypercholesterolemia.

Claimant states he sustained a ruptured disc at L4-L5 in 2008. He states he was working at a surgical practice as a medical assistant. He states he did undergo surgical intervention by [REDACTED] consisting of a discectomy and then had subsequent complication consisting of radiating pain into his left leg. He states he had an MRI study performed which was due to scarring. He states that in September of 2008 he was rearranging furniture when he felt a popping sensation in his back leading to the MRI study. He states he is not using an assistive device. He is now on Norco, Vicodin, Valium, Elavil and Motrin as needed.

The patient states he now lives with a roommate in a home. He states he does do household chores. He is able to drive. He reads, watches television, and mostly sits in a recliner on a heating pad. He occasionally will walk the dog. He states he can sit, stand, or walk about 30 minutes. He cannot lift anything more than 10 pounds.

* * *

The consulting internist provided the following conclusions:

(1) Back pain:

Claimant did bring imaging studies with him today And did have apparent successful fusion to the lumbar spine. Much of this appears to be post surgery arthritis and pain which appears to be mostly myofascial. At this point, continued supportive care would be indicated. He does not appear to be requiring the use of an assistive device. Motivation does appear to be playing a role in regards to recovery.

* * *

(9) Claimant does not allege a mental impairment as the basis for his disability.

There is no clinical evidence from a psychologist to establish a mental DSM diagnosis. There is no GAF score in the record. Claimant did not provide a DHS-49D or 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 back dysfunction with chronic pain due to a July 2008 back injury. The consulting internist reports a diagnosis of apparent successful fusion to the lumbar spine with post surgical arthritis and pain which appears to be mostly myofascial. However, at this time, the medical records do not establish a severe functional limitation arising out of claimant's physical impairments.

(11) Claimant has not applied for federal disability benefits (SSI) with the Social Security Administration. The DHS caseworker recommends that claimant apply for SSI through Social Security.

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 a wide range of light skilled work.

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

The department thinks the medical evidence shows that claimant retains the capacity to perform light work.

The department denied MA-P/SDA benefits because the nature and severity of claimant's impairments do not preclude light work activity for the required period of time.

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).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for purposes of the MA-P/SDA programs. 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 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 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, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments that profoundly limit his mental/physical ability to do basic work activities, he does not meet the Step 2 criteria.

Under the *de minimus* rule, claimant meets the severity and duration requirements.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

SHRT evaluated claimant's impairments using the relevant SSI Listings.

Claimant does not meet any of 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 medical assistant at a surgical practice. Claimant's work as a medical assistant involved medium to heavy work. Also, claimant was required to stand for extensive periods of time to assist doing procedures.

Claimant is no longer able to stand for extensive periods of time due to his back dysfunction and chronic pain.

Therefore, claimant has met burden of proof to establish that he is unable to return to his previous work.

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 does not allege disability based on mental impairment. Furthermore, claimant did not submit a DHS-49D or 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 his ruptured disc at L4-5, surgical intervention, consisting of a discectomy with the complication of radiating pain into his left leg. The report by the consulting internist states that claimant's diagnosis is back pain with an

apparent successful fusion to the lumbar spine, with post surgical arthritis and pain. The consulting physician did not state that claimant was totally unable to work.

Third, claimant testified that a major impediment to his return to work was his back/leg 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 summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Currently, claimant performs many activities of daily living, has an active social life with his parents and his children 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). If necessary, claimant could perform this work while using a wheelchair or a walker. In this capacity, he was able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

Because of the Handicapper Laws recently enacted in the United States, there are many jobs available for persons for handicaps similar to claimant.

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 29, 2010

Date Mailed: March 30, 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 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:

