

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: 2009-31276
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 in Saginaw on October 7, 2009. Claimant personally appeared and testified under oath.

The department was represented by Cheryl Kubczak (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 12, 2009) who was denied by SHRT (August 13, 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--47; education—high school diploma, post-high school education--none; work experience—prep cook at [REDACTED], line cook at [REDACTED], cook at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008, when he was employed as a prep cook at [REDACTED] restaurant.

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

- (a) Status-post right leg injury (1982);
- (b) Diabetes;
- (c) Chronic back spasms;
- (d) Status-post six right leg surgeries;
- (e) Chronic leg pain.

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

OBJECTIVE MEDICAL EVIDENCE (August 13, 2009)

A DHS-49 form showed claimant injured his knee in 2/2008 and had arthroscopy knee surgery in 5/2008. Currently, he has osteoarthritis of the right knee. His examination was normal. (page 11) He does not medically require an assistive device for ambulation. The doctor indicated he could frequently lift 50 pounds or more, but could only stand/walk less than two hours, unless he has surgery (page 12).

ANALYSIS: Claimant has arthritis in the right knee. He is able to walk without assistance. Claimant's treating physician has given, less than sedentary work restrictions based on claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927c and 927d, it will not be given controlling weight. The collective objective medical evidence in the record shows claimant is capable of performing light work.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, vacuuming, and grocery shopping (sometimes). Claimant uses a cane approximately 30 times a month, he does not use a walker, a wheelchair or a shower stool. Claimant wears a brace on his right leg 30 times in a month. Claimant was not hospitalized in 2008 or 2009.

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

(8) The following medical records are persuasive:

(a) A February 10, 2009 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnoses: osteoarthritis of right knee.

The physician reported the following functional limitations: walking restrictions and carrying restrictions. Claimant is able to lift up to 50 pounds frequently. Claimant is able to stand/walk less than 2 hours in an 8-hour day. Claimant is able to use his hands/arms normally. He is able to use his left leg normally but not able to use his right.

* * *

(9) Claimant does not allege disability based on a mental impairment. Claimant did not submit any clinical evidence of a mental impairment. Claimant did not provide a DHS-49E or a DHS-49E to establish his mental residual functional capacity.

(10) Claimant alleges disability based on right knee dysfunction and chronic right knee pain. The Medical Examination Report (February 10, 2009) prepared by an orthopedic surgeon reports that claimant is able to lift 50 pounds or more, does have walking restrictions, and can stand or walk less than 2 hours in an 8-hour day. Claimant has normal use of his hands/arms and normal use of his left leg. Claimant's right leg is dysfunctional. At this time, the medical records

do not establish a severe exertional impairment which totally precludes claimant from performing normal work functions.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied claimant's 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 has the Residual Functional Capacity (RFC) to perform unskilled light work.

The department denied MA-P/SDA benefits based on 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).

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 the 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 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.

However, SHRT evaluated claimant's impairments using the SSI listings and determined that claimant does not meet any of the applicable listings.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a cook for an [REDACTED] restaurant.

Claimant's work as a cook was light/medium work involving constant standing, bending, stooping, lifting and carrying. Since claimant has a chronic leg impairment, which was most recently aggravated by a work injury at [REDACTED], he is not able to meet the standing, lifting and carrying requirements of his prior position.

Therefore, claimant has met his burden of proof to establish that he is unable to return to his previous work as a cook at the [REDACTED] restaurant.

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

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

Second, claimant alleges disability based on a recent injury to his right knee/leg. The probative medical evidence in the record shows that claimant's injury precludes him from standing, lifting, bending and stooping with his right leg. Because claimant's previous work as a cook for [REDACTED] involved constant standing, bending and carrying, he is unable to return to his previous work.

Third, claimant testified that a major impediment to his return to work was his chronic right 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 short, 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 and has an active social life with his relatives.

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]. Because of the handicapper laws recently enacted in the United States, there are many jobs available for persons with handicaps (leg impairments that hamper ambulation) 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:

