

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: 2009-32412
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 17, 2009
Muskegon 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 September 17, 2009 in Muskegon. Claimant personally appeared and testified under oath.

The department was represented by Sue Faltinek (FIM).

The ALJ appeared by telephone from Lansing.

ISSUES

(1) Did the department establish probative psychiatric evidence to show marked improvement in claimant's mental condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis for SDA purposes?

(2) Did the department establish probative medical evidence to show marked improvement in claimants' physical condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis for SDA purposes?

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 a current SDA recipient who had an eligibility review in March 2009.
- (2) On May 5, 2009, MRT denied ongoing SDA benefits because claimant is now able to perform normal work activities.
- (3) On June 10, 2009, the local office notified claimant that MRT denied ongoing SDA benefits.
- (4) On June 22, 2009, claimant filed a timely Hearing Request. The local office suspended the closure of claimant's SDA pending the results of this hearing.
- (5) Claimant's vocational factors are: age—38; education—high school diploma; post high school education—two semesters at [REDACTED] (Business Administration major); work experience—assembly line worker at auto parts plant, and machinist.
- (6) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when he was a line worker at auto parts plant.
- (7) Claimant's unable-to-work complaints are:
 - (a) Status post rod placement in left thigh;
 - (b) Swollen knees;
 - (c) Inability to stand for long periods;
 - (d) Inability to sit for long periods;
 - (e) Numbness in left leg;
 - (f) Status post gunshot wound in upper left thigh (2008).

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

OBJECTIVE MEDICAL EVIDENCE (AUGUST 25, 2009)

SRHT decided that SDA benefits were previously granted due to claimant meeting or equaling an SSI Listing, or per Vocation Rules 201.27 and 202.20. SHRT denied ongoing SDA eligibility because claimant is now able to perform normal work activities.

(9) Claimant lives with his sister and performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), cooking (sometimes), light cleaning, laundry (sometimes) and grocery shopping (needs help). Claimant uses a cane 27 times a month; he uses a walker 30 times a month. He uses a shower stool 30 times a month. He does not use a wheelchair and does not wear braces. Claimant received inpatient hospitalization in 2008 to obtain treatment for a gunshot wound to his left leg.

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

- (11) The following medical records are persuasive:

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

The consulting physician provided the following background:

Claimant is a 37 year-old male with asthma, back problems, knee problems, shot in leg and hypertensive. He was shot in the left femur last year sustaining a compound fracture. During the recovery, the left knee has been a prominent painful area. He had knee problems that predated the femur fracture going back many years. He was in track in high school. He's had previous orthopedic attention and MRI's of the knees. He recalls that his left patella used to dislocate laterally. The femur healing and much of the focus is on the knee now. He progressed along to using a cane. Currently the cane is broken so he is using a walker instead. He is allowed to ambulate without the

support as well. He is still in physical therapy. The family doctor is prescribing Norco and he is using 30 per month both for the knee and also for the left lumbar area.

His lumbar dysfunction has primarily been an issue since the femur fracture. Apparently, there has been no substantial evaluation or treatment. He does mention that for perhaps years, he's had episodes of numbness in the legs when sitting for a long time. At this point, if he stands for more than 2 minutes the right lower leg will become numb. However, it is not clear that this is from the back.

* * *

The consulting physician provided the following impressions:

- (a) Asthma;
- (b) Non specific, recurrent left lumbar pain;
- (c) Long standing knee problems with peripatellar and perhaps other issues;
- (d) Left femur fracture healing;
- (e) Untreated hypertension.

Note: At this point in recovery, a sit-down job would be needed with frequent position change. In another 6 months he may be able to work on his feet. I am reluctant to make a firm prediction about his eventual ability to resume unrestricted industrial work. It is too early in his recovery.

* * *

(12) There is no probative psychiatric 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. Also, Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(13) The probative medical evidence does establish an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The report by the consulting physician states the following: at this point in recovery, a sit-down job would be needed with frequent position change. In another 6 months,

he may be able to work on his feet. I am reluctant to make a firm prediction about his eventual ability to resume unrestricted industrial work. **It is too early in his recovery.**

(14) 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 a continuation of his SDA benefits based on the impairments listed in paragraph #4, above. Particularly, claimant thinks he has a severe physical impairment (a slowly healing left femur fracture due to a gunshot wound). In addition, claimant notes that the consulting physician is "reluctant to make a firm prediction about claimant's eventual ability to resume unrestricted industrial work. It is too early in his recovery.

DEPARTMENT'S POSITION

The department thinks that claimant's left femur fracture has healed to the point that he is now able to perform normal work activities.

Note: The department did not review claimant's SDA eligibility using the revised SSI Improvement Rules. Also, the department did not obtain recent medical reports on claimant's left femur fracture and associated surgery. Also, claimant is currently receiving physical therapy and is taking strong pain medications.

LEGAL BASE

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).

The department has the burden of proof to show by a preponderance of the medical evidence in the record that claimant's mental/physical impairments have improved to the extent that claimant is now able to perform substantial gainful activity. PEM 261. "Disability," as defined by 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 ongoing 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(c).

The medical/vocational 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 the department has established marked improvement in claimants' mental/physical impairments to the degree that claimant is now able to perform normal work activities (SGA). **The department has the burden of proof** to show that claimant's mental/physical impairments have substantially improved to the point where claimant is now able to perform basic work activities for a normal 40 hour shift.

MENTAL IMPAIRMENTS

Claimant does not allege a mental impairment as the basis for ongoing eligibility for SDA.

PHYSICAL IMPAIRMENTS

The medical evidence of record establishes that claimant has ongoing physical impairments which have not substantially improved, and still prevent claimant from substantial gainful employment. Claimant's most important physical impairments are his longstanding knee problems, his status post lumbar fracture and status post lumbar fracture surgery. Claimant is currently taking large doses of pain medications and is currently receiving physical therapy.

Finally, the consulting physician states that claimant is not able to return to work: At this point in recovery, a sit-down job would be needed with frequent position change. In another 6 months, he maybe able to work on his feet. I am reluctant to make a firm predication about his eventual ability to resume unrestricted industrial work. It is too early in his recovery.

In short, the department has not shown that claimant's physical impairments have improved to the point that claimant now able to perform substantial gainful activity.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established marked improvements in claimant's mental and physical impairments to the extent that he is now able to perform SGA. PEM 261.

Accordingly, the department's denial of claimant's request for ongoing SDA is, hereby,
REVERSED.

SO ORDERED.

/s/

Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 4, 2010

Date Mailed: May 4, 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 receipt date of the rehearing decision.

JWS/sd

cc:

