

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: 2009-480
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
Jackson 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 March 17, 2009 in Jackson. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED]

The department was represented by Amy Connell (FIM).

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 (August 30, 2007) who was denied by SHRT (October 9, 2008) due to claimant's ability to do light work. Claimant requests retro MA-P for May, June and July 2007.

(2) Claimant's vocational factors are: age--41; education—11th grade, post-high school education--none; work experience—meat cutter for Sam's. He is currently employed by DHS as a chore services provider.

(3) Claimant is not performing Substantial Gainful Activity (SGA) because his monthly earnings (\$349) do not meet the definition of Substantial Gainful Activity which is \$900 per month.

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

- (a) Chronic leg swelling;
- (b) Chronic knee swelling;
- (c) Chronic ankle swelling;
- (d) Has difficulty walking long distances;
- (e) Low back dysfunction with pain.

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

OBJECTIVE MEDICAL EVIDENCE (OCTOBER 9, 2008)

SHRT thinks that claimant is able to perform unskilled light work. Claimant does not have a severe impairment that meets any of the SSI Listings.

SHRT denied MA-P/SDA based on Vocational Rule 202.17.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressings, bathing, cooking, dish washing, light cleaning, mopping (sometimes), vacuuming, laundry and grocery shopping. Claimant uses a cane approximately 15 times a month. He does not use a walker or a wheelchair. He does use a shower stool occasionally. Claimant wears a back brace

occasionally. Claimant received inpatient hospitalization in June 2008 for heart dysfunction, blood clot and pneumonia.

- (7) Claimant does not have a valid driver's license, and does not drive an automobile.

Claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) An August 27, 2008 Medical Needs form (DHS-54A) was reviewed. The physician provided the following diagnoses: hypertension, arthritis and gout.

The physician reports that claimant does not need special transportation and does not need someone to accompany him to appointments. Claimant did not have a medical need for assistance with activities of daily living.

The physician reported that claimant is able to work at his usual occupation, but is not able to perform prolonged standing (over 2 hours). The physician reported that claimant is able to work at any job as long as he is not required to stand more than 2 hours in a setting.

- (b) A May 27, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnosis: high blood pressure/hypertension and gouty arthritis.

The physician reported that claimant is able to lift 20 pounds occasionally. He is able to stand/walk less than 2 hours. He is able to sit about 6 hours in an 8 hour day. He is able to use his hands/arms normally and he is able to use his feet/legs normally.

The physician reported that claimant has no mental limitations that would preclude normal work activities.

- (9) The probative medical evidence, standing alone, does not establish an acute (mental) non-exertional impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant does not allege a mental impairment as

the basis for his disability. Claimant did not supply a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The most recent medical evidence in the record (May 27, 2009 DHS-49) shows current diagnoses of hypertension and gouty arthritis. The physician indicates the claimant is able to perform normal work activities except that he is unable to stand more than 2 hours continuously. The most recent probative evidence (DHS-49), in combination with claimant's testimony, does not establish a severe impairment that would preclude substantial gainful activity. In fact, claimant is working as a chore service provider for DHS and earns \$349 per month.

(11) Claimant's most prominent complaint is the pain and swelling he experiences in his legs, ankles and feet when he stands for a substantial amount of time.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. His application was denied. He filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] in the Hearing Request.

* * *

Claimant is a 41-year-old male who has an 11th grade education and a work history of childcare.

Health Issues: arthritis, morbid obesity (BMI 48), chronic ?, hypertrophy, bronchitis, atypical chest pain, irregular heart rate, and possible COPD.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled light work. The department thinks that the claimant's medical evidence does not clinically document any severely restrictive impairment. The department thinks that claimant can perform a wide range of unskilled light work.

The department denied MA-P/SDA benefits based on Med-Voc Rule 202.17.

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 or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

Claimant does not meet the SGA definition *per se*, because he does not have earnings of at least \$900. However, claimant's ongoing work as a chore services provider with DHS does indicate a significant ability.

Based on this analysis, claimant meets the Step 1 disability requirements.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. A severe impairment is defined as a verified medical condition which totally precludes substantial gainful work. Duration means the impairment is expected to last for 12 continuous months or result in death.

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

STEP 3

The issue at Step 3 is whether claimant meets the SSI Listings. Claimant does not allege disability based on the Listings.

Therefore, claimant does not meet the Step 3 disability requirements.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant is currently employed at DHS as a chore services provider.

Therefore, by definition, claimant is able to perform his previous work.

Therefore, claimant does not meet the Step 4 disability requirement.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED] at 20 CFR 416.967.

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

Claimant alleges disability based on the following physical impairments: bilateral leg swelling, bilateral knee swelling, bilateral ankle swelling, and inability to walk for a fixed sustaining period of 2 hours and lower back pain. The medical evidence of record does not establish that claimant's impairments totally preclude all SGA. Claimant is currently employed by DHS as chore services provider and he works approximately 4 hours a day, 5 to 6 days a week. For his services, DHS provides him with a salary of \$329 per month. His current employment as a chore service provider for DHS indicates that claimant is able to perform SGA.

During the hearing, claimant testified that a major impediment to his return to work was his back dysfunction and bilateral leg and back pain. 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 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 an extensive list of activities of daily living for himself as well as for his chore services clients. In addition, he has

an active social life and is computer literate. The evidence in the record, along with claimant's testimony, establishes that claimant is currently able to perform unskilled, light work.

Based on this analysis, the department correctly denied claimant's application for MA-P/SDA.

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 is, hereby, **AFFIRMED**.
SO ORDERED.

/s/

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

Date Signed: July 27, 2009

Date Mailed: July 29, 2009

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/sd

cc:

