

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: 2009-5941
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 26, 2009
Kent 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 March 26, 2009 in Grand Rapids. Claimant personally appeared and testified under oath.

The department was represented by Kitty Sullivan (FIM) and Kathryn Fitzgerald (ES).

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team on March 26, 2009. Claimant waived the timeliness requirement so his new medical evidence would be reviewed by SHRT. After SHRT's second disability denial, the ALJ issued the decision below.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for 90 days (SDA)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for 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 SDA applicant (September 8, 2008) who was denied by SHRT (January 6, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirement.

(2) Claimant's vocational factors are: age—47; education—high school diploma; post high school education—course work at [REDACTED] (Computer Operation) and course work at [REDACTED] in Computer Hardware; work experience—door-to-door window salesman; temporary work on a cereal assembly line, kitchen aide, Braille librarian assistant and sewing factory worker while in prison.

(3) Claimant has not performed substantial gainful activity since 2007 when he worked as a door-to-door salesman for a window company.

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

- (a) Blurred vision in both eyes;
- (b) Sickle cell anemia;
- (c) Chronic pain in arms and legs;
- (d) Vertigo.

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

OBJECTIVE MEDICAL EVIDENCE (January 6, 2009)

SHRT denied SDA benefits due to insufficient medical records.

SHRT reviewed claimant's eligibility using Listings 2.01 and 2.08.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning (sometimes), mopping (sometimes), vacuuming (sometimes), and laundry. Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces. He was not hospitalized for inpatient treatment in 2008 or 2009.

(7) Claimant has a driver's license but does not drive an automobile. Claimant is computer literate. He has taken computer coursework at two different community colleges.

(8) The following medical records are persuasive:

- (a) A January 26, 2009 eye examination report (DHS-49I) was reviewed. The right eye has relative visual acuity due to an E3 epiretinal membrane. There are no abnormal findings for the left eye.

The ophthalmologist reported that there are no limitations of activities other than activities that require very precise depth perception.

- (b) A January 26, 2009 physical and mental examination report (DHS-49E) was reviewed. The physician provided the following diagnoses:

- (1) Episodes of vertigo;
- (2) Hearing loss;
- (3) Blurred vision; possible cataracts;
- (4) Sick cell straight;
- (5) Retinal detachment—post surgical repair;
- (6) Suspect Meniere's syndrome.

Physician did not list any functional limitations based on claimant's current diagnosis.

(9) There are no psychological assessments in the record. Claimant does not allege a mental impairment as the basis for his disability. 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 for the required period of time. The consulting physician reported the following current diagnoses: (1) sickle cell traits; (2) retinal detachment/post surgical repair; (3) suspect Meniere's syndrome. The consulting physician did not state the claimant is totally unable to work based on his current impairments.

(11) Claimant recently applied for federal disability benefits 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 SDA based on the impairments listed in Paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant's medical evidence is insufficient to establish disability.

The department evaluated claimant's impairments based on SSI Listings 2.01 and 2.08. Claimant does not meet the requirements of the applicable listings.

LEGAL BASIS

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 SDA purposes. PEM 261. "Disability," as defined by 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 is earning substantial income, he is not disabled for SDA purposes.

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 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. Claimant must establish an impairment which is expected to result in death, has lasted for at least 12 months, and totally 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 a *de minimus* requirement, claimant meets the Step 2 disability test.

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 the Listings.

However, SHRT evaluated claimant's disability application based on SSI Listings 2.01 and 2.08. Claimant does not meet the requirements of the applicable 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 door-to-door salesman for a window company. This was light work.

There are no medical examination reports in the record which clearly state the claimant is unable to perform his prior work. Claimant testified that he could not do the work due to poor vision. However, the report by the ophthalmologist states that claimant's left eye has adequate vision to perform unskilled sedentary work.

Since claimant's medical documentation does not establish that he is totally unable to do his prior work due to his poor vision, he does not meet the Step 4 disability test.

STEP #5

The issue at Step 5 is whether claimant has a residual functional capacity (RFC) to do other work.

The claimant has the burden of proof to show by the medical evidence in the record that his combined medical/physical impairments meet the department's definition of disability for SDA purposes.

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

Second, claimant alleges disability based on poor vision, sickle cell disorder and vertigo. The consulting physician who provided a report in the record, dated January 26, 2009 did not state the claimant was totally unable to work based on his physical impairments.

Third, claimant alleges disability based on chronic pain in his hands, arms, feet and legs. During the hearing, claimant testified that a major impediment to his return to work was the chronic pain he has in his arms and legs due to his sickle cell anemia.

Unfortunately, evidence of pain, alone, is insufficient to establish disability for 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 the combination of his impairments. Claimant currently performs an extensive list of activities of daily living, and has an active social life with his mother, his adult son and his young daughter. Also, claimant is computer literate, and has training, at the junior college level in computer science.

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 theater, parking lot attendant and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's 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 SDA disability requirements under PEM 261.

Accordingly, the department's denial of claimant's SDA application is hereby,
AFFIRMED.

SO ORDERED.

/s/

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

Date Signed: July 7, 2009

Date Mailed: July 8, 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 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

cc:

