

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: 2009-6790
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 19, 2009
Gratiot 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 Ithaca on February 19, 2009. Claimant personally appeared and testified under oath.

The department was represented by Jill Barnes (FIM) and Garilee Janofski (ES).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on February 19, 2008. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

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 (September 19, 2008) who was denied by SHRT (January 2, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requests retro MA for June, July and August 2008.

(2) Claimant's vocational factors are: age--39; education--high school diploma, post-high school education--holds a [REDACTED] license and is trained to drive tractor trailers over-the-road; work experience--over-the-road truck driver for a total of four years.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2008, when he was an over-the-road truck driver for short freight lines.

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

- (a) Unable to sit more than 10 minutes at a time;
- (b) Unable to stand more than 10 minutes at a time.

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

OBJECTIVE MEDICAL EVIDENCE (January 2, 2008)

SHRT decided claimant is able to perform light unskilled work. SHRT evaluated claimant's eligibility using SSI Listing 1.04. SHRT decided claimant does not meet this Listing.

Using claimant's vocational profile [younger individual, age 39, with a high school education and a history of driving a tractor/semi-trailer over the road], the department denied disability benefits based on Med-Voc Rule 202.20.

(6) Claimant lives with his 19-year-old son and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing (sometimes), vacuuming and grocery shopping (needs help carrying the bags). Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant did not receive any in-patient hospital services in 2008 or 2009.

(7) Claimant as a valid [REDACTED] license and drives an automobile approximately three times a month. It is not known whether claimant is computer literate.

(8) The following medical records are persuasive:

- (a) A July 24, 2008 independent physiatry report was reviewed. The physiatrist provided the following information:

* * *

CHIEF COMPLAINT:

Claimant is a 38-year-old gentleman who presents with the primary complaint of pressure and pain localized through the region of the 'tailbone.' He reports the pain radiates across the lower back. With activity, the pain becomes more severe and radiates up the back to the neck. With continued activity, he reports pain and numbness involving the legs. His lower extremity symptoms alternate between the right and left leg. His lower extremity symptoms never involve both legs simultaneously.

Claimant reports that driving or even riding in a car longer than approximately 1 ½ hours aggravates his discomfort. His increased symptoms are attributed to 'feeling every bump in the road.' As well as the vibration of the engine. Claimant indicates that, when his symptoms are severe, he develops a burning discomfort localized to the posterior neck just 'as if there is heating pad applied to that region,' associated with increased sweating localized to the same area. [Claimant] does not report any other symptoms involving any other regions of the body.

* * *

The report of an MRI study of the lumbar spine, dated March 17, 2008, indicates mild spondylotic degenerative changes, with disc herniation at L5-S1. Mild hypertropic

degenerative changes were noted throughout the lower lumbar spine. No acute pathologic finding was noted.

A report authored by [REDACTED], dated [REDACTED], indicates claimant had been treated for a complaint of low back pain. At that time, he was released to return to work without restriction.

A report of an MRI study of the lumbar spine, dated October 18, 2005, indicates disc desiccation and mild broad-based disc bulging at L5/S1 without evidence of disc herniation. No evidence of central or foraminal stenosis was noted.

* * *

Claimant brings with him prescriptions from [REDACTED] indicating he has been referred for blood testing, including a sedimentation rate, C-reactive protein, anti-nuclear antigen, and rheumatoid factor, to rule out the possibility of an underlying inflammatory disease, such as rheumatoid arthritis causing low back pain. He has also been referred for a bone scan to rule out the possibility of any type of bone abnormality. Testing is appropriate. If, as anticipated, the blood tests and bone scan prove negative, no further testing or treatment would be necessary, as it relates to the reported work injury of February 14, 2008. If this blood test and bone scan are normal, as is his recent MRI study, he could be released to return to work without restriction.

At this time, based upon my examination, and the available diagnostic testing, I am unable to identify any occupationally-related pathology related to the February 14, 2008 incident that would limit his ability to perform his normal employment duties as he was able to do prior.

* * *

- (b) A [REDACTED] prescription by claimant's treating physician, [REDACTED] [REDACTED] [REDACTED] was reviewed. The prescription note states as follows:

Unable to work in any capacity until 7/15/2009.

No clinical basis for this off work order was provided by the treating physician.

- (c) A [REDACTED] office visit note was reviewed. The note was prepared by claimant's treating physician [REDACTED]

The physician provided the following background: Claimant is seen in follow-up for complaints of low back pain. He did see [REDACTED], the rheumatologist at [REDACTED]. [REDACTED] did not find evidence of inflammatory arthritis affecting the spine. There is concern for a central hypersensitivity syndrome such as fibromyalgia. [REDACTED] recommended a sleep study, physical therapy and Lyrica. Unfortunately, none of these are covered by claimant's particular health insurance plan at this time. Claimant has tried to get disability benefits through the State, which would improve his insurance coverage. He has legal representative helping him in that regard.

* * *

On exam, claimant remains morbidly obese, truncal flexion/extension are mildly limited. Straight leg raising is negative bilaterally. There is some tightness in the hamstrings. Reflexes are intact at the knees and ankles. There is tenderness over the lumbosacral junction, sacroiliac joint, lumbar paraspinous muscles and gluteus medius muscles bilaterally. There is myofacial pain of the lesser nature through the mid-back.

I agree that claimant may have a myofacial pain syndrome, sleep apnea certainly could be contributing to this. I would recommend sleep study, physical therapy, and Lyrica. However, claimant cannot proceed with diagnostic work-up or treatment due to a lack of appropriate insurance benefits. He will walk for exercise. I filled out some forms for him at his request for his disability application. Follow-up with me is to be arranged.

* * *

The physiatrist did not state that claimant is totally unable to work.

- (d) A January 23, 2009 Physical Examination Report (DHS-49) was reviewed. The physiatrist stated the following diagnosis: low back pain.

The physiatrist provided the following physical limitations: claimant is able to lift up to 10 pounds occasionally. He is able to stand and/or walk less than 2 hours in an 8-hour day and able to sit less than 6 hours in an 8-hour day. He is able to use his hands/arms normally. He is not able to use his feet/legs to operate foot controls.

Claimant does not have any mental limitations.

(9) There is no probative psychological 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. Claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity. Claimant did not allege disability based on a mental impairment.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's personal physiatrist states, "he may have a myofascial pain syndrome, sleep apnea certainly could be contributing to this." Claimant's physiatrist did not report that he was totally unable to work in his narrative report dated January 22, 2009. However, on February 9, 2009, claimant's physiatrist stated that he is unable to work in any capacity until July 15, 2009. The independent physiatrist stated that there was no basis for finding that claimant was totally unable to work. The medical record in this case includes contradictory evidence regarding claimant's ability to work. At this time, there is no reliable medical evidence to establish a severe, disabling physical condition.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. His application is currently pending.

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.

Claimant thinks he is entitled to MA-P/SDA benefits because he needs medical treatment which is not covered by his current insurance program.

DEPARTMENT'S POSITION

The department thinks claimant is able to perform unskilled light work. The department evaluated claimant's impairments using SSI Listing 1.04. Claimant does not meet this Listing.

Based on claimant's vocational profile [younger individual with a high school education and a history of work as a over-the-road truck driver], the department denied disability benefits based on Med-Voc Rule 202.20.

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. 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, or has existed for at least 12 months totally preventing all current 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 claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

However, SHRT evaluated claimant's eligibility based on SSI Listing 1.04. Claimant does not meet the applicable Listing.

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 last worked as an over-the-road truck driver. This was light, semi-skilled work.

The medical evidence of record establishes that claimant has neck and back dysfunction. He is unable to sit or stand for more than 10 minutes, secondary to his back dysfunction. Claimant's current diagnoses prevent him from returning to his previous job as a long haul truck driver because he is unable to sit in the cab of his truck for the required 8-hour shift.

Therefore, claimant meets the Step 4 disability test.

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

First, claimant does not allege disability based on a severe mental impairment. There are no medical records to establish a severe mental impairment. Also, claimant did not provide a DHS-49D or a DHS-49E.

Second, claimant alleges disability based on neck and back dysfunction. The medical record establishes that claimant has chronic low back pain. An independent report by a physiatrist states: "Claimant may have a myofascial pain syndrome, sleep apnea certainly could be contributing to this." While claimant's back condition does preclude him from heavy lifting, it does not preclude all employment.

Finally, claimant testified that a major impediment to his return to work was his neck and back pain and his inability to sit and stand for long periods due to the 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 neck and back dysfunction in combination with his radiating pain.

Claimant currently performs several activities of daily living and has an active social life with his 19-year-old son who lives with him. Claimant drives an automobile approximately three times a month.

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). Claimant is able to perform work that has a sit-stand option, including work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for Walmart.

Based on 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: February 26, 2010

Date Mailed: February 26, 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.

2009-4031/JWS

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/cv

cc:

