

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: 2008-8749
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 3, 2008
Genesee 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 April 3, 2008 in Flint at the South Saginaw Street office. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED]

The department was represented by Jeff Cook (FIM).

ISSUE

- (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 (May 4, 2007) who was denied by SHRT (February 25, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age—25; education—11th grade; post high school education—none; work experience—labor for construction company, car parts packer, laborer at [REDACTED], front and back worker at [REDACTED].

(3) Claimant has not performed substantial gainful activity since April 2007 when he worked as a laborer at a construction site.

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

- (a) Brain aneurysm;
- (b) Status post brain surgery ([REDACTED]).

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

Claimant was treated in-patient from [REDACTED] to [REDACTED] with a subarachnoid hemorrhage with successful right front temporal craniotomy with clipping of the aneurysm. At discharge, [REDACTED], the condition had improved. He was mobile and had no neurological deficits (page 10, 24, 25, 39, 41).

ANALYSIS

The conditions improved with treatment.

* * *

(6) Claimant lives with his wife and son and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming and grocery shopping. Claimant received inpatient hospital services in [REDACTED] for treatment of a brain aneurysm. He was hospitalized in April for approximately [REDACTED].

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

(8) The following medical records are persuasive: (a) a [REDACTED] [REDACTED]

[REDACTED] discharge summary was reviewed.

(9) The physician provided the following background:

The claimant is a 24-year-old Caucasian male who was transferred from [REDACTED]. He came to [REDACTED] with an acute onset of severe headache along with nausea, vomiting, and photophobia. CT and CTA of the head done at [REDACTED] confirmed the presence of a ruptured anterior communicating artery aneurysm. He was subsequently transferred to [REDACTED] for further neurosurgical care, including possible coiling or clipping of his aneurysm. A 4-vessel cerebral angiogram was done which confirmed the presence of a broad-based anterior communicating artery aneurysm. At that time, it was felt that the aneurysm may be able to be coiled but this was not possible.

Patient was then transferred to the operating room for the above procedure. The clipping of the aneurysm was done without complication. Patient was sent to the NICU in stable condition. Preoperative and post-operatively, the patient remained conscious, complaining of headache. He was seen by NICU for blood pressure control.

Throughout his hospital stay, the patient had no neurological deficits. He was put on Dilantin, Nimotop and Simvastatin for prevention of vasospasms.

* * *

The reporting physician did not state that claimant was totally unable to work.

(10) 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. Also, claimant did not submit a DHS-49D or

DHS-49E to establish his mental residual functional capacity. Taking the record as a whole, there is no evidence that claimant is totally unable to work based on a mental impairment.

(11) 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. The physician who prepared the discharge summary stated that claimant's surgical procedure was successful and that "throughout his hospital stay, the patient had no neurological deficits. There is no evidence in the record that claimant is totally unable to work due to a physical impairment, including his status post-subarachnoid hemorrhage.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. Claimant's 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.

DEPARTMENT'S POSITION

The department thinks the medical evidence of record shows that claimant's condition is improving, or is expected to improve, with medical compliance. The claimant's medical condition does not prevent all work activities within 12 months from the date of onset or from the date of surgery.

Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. SDA is denied under PEM 261.

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).

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 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, has existed for at least 12 months, and totally prevents 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.

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 most recently worked as a laborer at a construction sight. This was medium work.

The medical evidence of record establishes that claimant had brain surgery in [REDACTED]. Based on the entire record, the Administrative Law Judge concludes that claimant is not able to perform strenuous work requiring much standing, lifting and walking. Therefore, claimant is not able to return to his previous work as a laborer at a construction site.

Therefore, the 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 mental disorder. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a [REDACTED] brain aneurysm and brain surgery in [REDACTED].

The medical evidence of record shows that claimant's aneurysm was successfully corrected by surgery in [REDACTED]. The surgical report from [REDACTED] does not establish that claimant is unable to work due to his [REDACTED] brain surgery. Claimant's [REDACTED] brain surgery does not preclude all employment.

In short, the Administrative Law Judge is not persuaded that claimant is solely unable to work based on his [REDACTED] brain aneurysm and [REDACTED] brain surgery. Claimant currently performs an extensive list of activities of daily living, has an active social life with his wife and daughter, and is computer literate.

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 physically able to work as a ticket taker for the theater, as a parking lot attendant, as a greeter at [REDACTED] and as a telemarketing representative.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application, based on Step 5 of the sequential analysis 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 11, 2009

Date Mailed: February 11, 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:

