

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: 2009-13792
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 24, 2009
St. Clair 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 Port Huron on March 24, 2009. Claimant did not appear at the hearing. Claimant was represented by [REDACTED].

Claimant's representative requested additional time to submit new medical evidence. The new medical evidence was received from the State Hearing Review Team (SHRT) on March 25, 2009. 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)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?

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 applicant (August 4, 2008) who was denied by SHRT (March 3, 2009) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide. Claimant requests retro for May, June and July 2008.

(2) Claimant's vocational factors are: age--41; education—high school diploma, post-high school education--some; work experience—telecommunications sales executive, owner/operator of a personal fitness company.

(3) Claimant's most recent Substantial Gainful Activity (SGA) is unknown.

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

- (a) Low back pain;
- (b) Chronic leg pain;
- (c) Limited ability to lift;
- (d) Limited ability to stand;
- (e) Limited ability to walk.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 3, 2009)

SHRT evaluated claimant's impairments based on SSI Listings 1.01. Claimant did not meet the requirements of the applicable listing. SHRT determined that claimant was able to perform unskilled medium work. SHRT denied claimant's application based on Med-Voc 203.28 as a guide.

(6) Claimant's Activities of Daily Living (ADLs) are unknown.

(7) Claimant's driver's license status is unknown. Claimant's computer literate is unknown.

(8) The following medical records are persuasive:

(a) An October 15, 2008 Medical Examination Report (DH-49) was reviewed.

The physician provided the following diagnoses: Cervical spondylolysis. The physician did not report any functional limitations.

(b) A [REDACTED] narrative report was reviewed.

The neurologist provided the following background:

I saw claimant today in the office for a follow-up visit with an updated MRI of the cervical spine. He continues to have pain in the neck with radiation into the left arm and some numbness and tingling in the last 3 fingers. He did physical therapy which did not provide any long-term benefit. He is really interested in definitive treatment.

* * *

An MRI of the cervical spine, dated 10/21/2008 was reviewed. There is spondylolysis present at C5-6 and at C6-7. At C5-6 there is a disc-spur complex eccentric to the left that deforms the cord slightly and causes narrowing of the neuroforamen. There is some positive CSF seen on the sagittal images. At C6-7, there is spondylolysis that results in non bilateral neuroforaminal narrowing and some diminished CSF cord compression.

On examination, patient is a middle-aged male who is in no acute distress. He has full strength in his arms and hands. He has intact muscle tone in both. Sensation is preserved to light touch currently. His reflexes are +1 at biceps, triceps and brachioradials. He has a positive Spurling sign on the left.

* * *

(9) Claimant does not allege a mental impairment as the basis for his disability. did not submit a DHS-49D or a DHS-49E to establish his mental residual functioning capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's neurologist reports that claimant is a middle-aged male who is in no acute distress. He has full strength in his arms and hands. He has intact muscle tone in both. Sensation is preserved to light touch currently. His reflexes are 1+ at biceps, triceps and brachioradialis. The treating neurologist does not state that claimant is totally unable to work.

(11) There is no information on claimant's Social Security status.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P benefits based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant retains the Residual Functional Capacity (RFC) to perform a wide range of medium work. Claimant's past work was sedentary. Therefore claimant retains the capacity to perform his past relevant work.

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).

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 purposes. PEM 260. "Disability," as defined by MA-P 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.

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).

There is no evidence of claimant's vocational status on the record.

Therefore, claimant does not meet 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 that he has an impairment which is expected to result in death, or has existed for at least 12 months, thereby preventing all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P, 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 previously worked as a [REDACTED]. This was sedentary work. There are no medical examination reports in this record which clearly state that claimant is totally unable to perform his work as a [REDACTED]. Claimant's residual functional capacity has not been clinically established.

Since claimant's medical documentation does not establish that he is unable to perform his past work as a telephone sales executive, he does not meet 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 evidence in the record, that his combined mental/physical impairments meet the department's definition of disability for MA-P purposes.

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

Second, claimant alleges disability based on neck and back pain and cervical spine dysfunction. The medical records do contain a DHS-49 which does not show any functional limitations. Also, the report by the neurologist, dated December 23, 2008, states that claimant is a middle-aged male who is in no acute distress and has full strength in his arms and hands.

Claimant's major impairment is neck pain. Unfortunately, pain, alone, is insufficient to establish disability for MA-P purposes.

There is no testimony from claimant about the severity and regularity of his pain.

In short, the Administrative Law Judge note that the clinical evidence and the lack of testimony from claimant himself lead to the conclusion that claimant has not met his burden of proof.

Based on this analysis, the department correctly denied claimant's MA-P 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 disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: July 30, 2009

Date Mailed: July 30, 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:

