

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: 2009-14418
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 7, 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, a telephone hearing was held on May 7, 2009 in Jackson. Claimant personally appeared and testified under oath.

The department was represented by John Anderson (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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/SDA applicant (October 17, 2008) who was denied by SHRT (March 18, 2009) due to claimant's failure to establish an impairment which meets the departments severity and duration requirements.

(2) Claimant's vocational factors are: age--47; education—high school diploma, post-high school education—studied small engine repair; work experience—drove cars for an auto auction, operated a paper route, drove a taxi cab.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since December 2007 when he drove cars to an auto auction.

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

- (a) Neck pain;
- (b) Back pain.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 18, 2009)

SHRT decided that claimant is capable of performing past work as a driver for an automobile auction. SHRT evaluated claimant's eligibility using the SSI Listings at 20 CFR 404, Part P. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on claimant's ability to perform his past work as an automobile driver.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant did not have inpatient hospital care in 2008 or 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately 4 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

- (a) A [REDACTED] [REDACTED] [REDACTED] Report was reviewed. The physician provided the following background:

Chief Complaints: Neck pain.

Chronic Conditions:

- (1) Lumbago;
- (2) Osteoarthros NOS;
- (3) Cervical spondylosis;
- (4) Benign paroxysmal vertigo.

The physician provided the following assessment:

- (1) Cervical spondylosis.

- (b) A [REDACTED] [REDACTED] Report was reviewed. The physician provided the following background:

Chief Complaints:

- (1) Neck and back pain.
- (2) Right forearm pain (injured while a pushing a vehicle 2 months ago).

Assessment:

- (1) Cervical spondylosis;
- (2) Elbow/forearm/wrist injury, NOS.

- (c) A [REDACTED] Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: Cervical spondylosis; right elbow pain.

The physician states that claimant is able to lift/carry up to 10 pounds occasionally. Physician states that claimant is totally unable to walk/stand and sit. The physician states that claimant is totally unable to use his hands/arms but is able to use his feet/legs normally.

The physician states that claimant is disabled.

NOTE: This medical source opinion is contrary to the great weight of medical evidence in the record and will not be given controlling weight under 20 CFR 416.927.

(9) Claimant does not allege a severe mental impairment as the basis for his disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(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. The medical reports do establish that claimant is unable to lift more than 10 pounds on a continuous basis. Claimant's physician states that he is totally unable to stand, sit or walk. The medical record in this case contains contradictory evidence. There is no consensus on claimant's physical limitations in the medical record. The [REDACTED] from the [REDACTED] do not state that claimant is totally unable to work. However, claimant's family physician states that he is unable to work at this time. There is no reliable medical evidence in the record to establish a severe, disabling physical condition that totally precludes all work activities including sedentary work.

(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 MA-P/SDA based on the impairments listed in paragraph #4, above. Claimant thinks he is entitled to MA-P/SDA because he needs medical services which are not currently available.

DEPARTMENT'S POSITION

The department thinks that claimant is capable of performing his last work as a driver for an auto auction.

The department evaluated claimant's impairments using the SSI Listings at 20 CFR 404, Subpart P. Based on claimant's vocational profile [individual approaching advanced age (47), with a high school education and training in small engine repair] the department denied disability benefits based on claimant's ability to do his prior work as an automobile driver for an auto auction.

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 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 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 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 all the Listings at 20 CFR 404, Subpart P. SHRT decided that claimant does not meet any 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 an auto driver for an automobile auction. This was sedentary work.

Based on the medical evidence of record, claimant is able to walk and sit for purposes of driving an automobile to an auction.

Based on claimant's current physical impairments, he is able to return to his previous job as an automobile driver for an automobile auction.

Therefore, claimant 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/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 impairment.

Second, claimant alleges disability based on cervical spondylosis. The medical evidence is inconsistent. The [REDACTED] does not state that claimant is totally

unable to work. Claimant's family physician states that he is completely disabled. Although claimant is physically challenged, he is currently receiving medications for his neck and back pain.

Finally, claimant testified that a major impediment to his return to work was his neck and back 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 combination of impairments. Claimant currently performs many activities of daily living, has an active social life and drives an automobile approximately 4 times a month. In addition, claimant 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 able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED]. He is also able to work as an automobile driver.

Consistent with this analysis, the department correctly denied claimant's MA-P/SDA application, under 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.

Accordingly,

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

Date Signed: August 28, 2009

Date Mailed: August 31, 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:

