

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: 2009-14760
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2009
Calhoun 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 5, 2009 in Battle Creek. Claimant personally appeared and testified under oath.

The department was represented by Tracy Lynn Trall (ES) and Linda Matthews (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

(1) Did the department provide probative medical evidence to show marked improvement in claimant's mental condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

(2) Did the department provide probative medical evidence to show marked improvement in claimant's physical condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

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 a former MA-P/SDA recipient who had an eligibility review in October 2008. Claimant's MA-P/SDA benefits were terminated on March 15, 2009 incorrectly, based on a SHRT determination that his condition had improved.

(2) During the hearing, the FIM acknowledged that claimant's MA-P/SDA had been inappropriately terminated and agreed to restore claimant's benefits pending the outcome of this hearing.

(3) On November 12, 2008, MRT denied continuing MA-P/SDA benefits because claimant is able to perform unskilled work.

(4) On January 8, 2009, the local office notified claimant that MRT denied his request for ongoing MA-P/SDA benefits.

(5) On January 14, 2009, claimant filed a timely hearing request. The local office declined to restore claimant's MA-P/SDA, even though claimant's hearing request was filed within 10 days of the notice.

(6) On March 25, 2009, SHRT denied claimant's request for ongoing MA-P/SDA for the following reasons:

Capable of performing other work: Medical Improvement, 20 CFR 416.994.

(7) Claimant's vocational factors are: age--44; education—high school diploma, post-high school education--none; work experience—line worker at an auto parts factory and janitor for a temporary employment agency.

(8) Claimant has not performed Substantial Gainful Activity (SGA) since 1997 when he worked as a janitor for a temporary employment agency.

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

- (a) Lupus;
- (b) Arthritis;
- (c) Chronic arthritis pain;
- (d) Kidney dysfunction;
- (e) Unable to stand more than 10 minutes;
- (f) Thrombosis/blood clot in left kidney.

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

See SHRT evaluation at paragraph #5, above.

(11) Claimant lives with his aunt and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning (sometimes), and laundry. Claimant uses a cane approximately twice a month. He does not use a walker, a wheelchair or a shower stool. He does not wear braces. Claimant was not hospitalized for treatment in 2008 or 2009.

(12) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate. Claimant enjoys playing chess as a hobby.

(13) The following medical records are persuasive:

- (a) An April 20, 2007 Medical Examination Report was reviewed.

The physician provided the following history:

Hypertension; thrombosis of renal vein; lupus with diffuse joint pain.

The physician provided the following assessment in 2007:

Hypertension benign. Status: worsening.

Thrombosis of renal vein.

Assessment: Being treated at the [REDACTED].

Lupus. Status: worsening.

- (b) A September 11, 2008 History and Physical Report #6 was reviewed. The physician provided the following history: Claimant needs refill of Vicodin but states that this is not working for his pain so wondering if he can switch back to Vicodin. Claimant is a 44-year-old male who presents with a compliant medication review. Claimant has been using analgesics. Claimant has degenerative arthritis with past a vascular necrosis of bilateral hips, and degenerative arthritis of the right knee. Also history of lupus.

Past medical History:

Hypertension. Systemic lupus erythematosus. Lupus nephritis. Chronic arthritis, secondary to lupus. Renal thrombosis.

The physician provided the following assessment:

- (1) Hip pain. Bilateral hip pain due to a vascular necrosis/lupus, uncontrolled.
- (2) Arthritis, knee.
- (3) Benign essential hypertension (controlled).

(14) Claimant does not allege disability based on a mental impairment. There are no current probative psychiatric evaluations in the record. The department did not submit a DHS-49D or a DHS-49E to establish claimant's mental residual functional capacity.

(15) The probative medical evidence establishes an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The September 11, 2008 History and Physical Reports hip pain—bilateral hip pain due to a vascular necrosis/lupus, uncontrolled. Arthritis knee. Benign essential hypertension. The current medical records do establish that claimant is unable to perform jobs that require heavy lifting or extensive standing without a sit stand option.

(16) 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 a continuation of his MA-P/SDA benefits based on the impairments listed in paragraph #4, above.

In particular, claimant thinks that his lupus, in combination with his renal thrombosis and degenerative arthritis with past a vascular necrosis of bilateral hips, in combination preclude substantial gainful activity.

DEPARTMENT'S POSITION

The department evaluated claimant's disability claim using SSI Listing 14.01. The department thinks that claimant does not meet the applicable Listing and that claimant has not established a severe impairment which precludes all work activity under 20 CFR 416.968.

The department thinks that claimant is able to perform sedentary work under 20 CFR 416.967(a) and light work under 20 CFR 416.967(b).

The department also used Med-Voc Rules 202.20 and 201.27 as a guide.

NOTE: The department did not review claimant's MA-P/SDA eligibility using the applicable SSI Improvement Rules.

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).

The department has the burden of proof to show by a preponderance of the medical evidence that claimant's physical/mental impairments have improved to the extent that claimant is now able to perform substantial gainful activity. 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 the department has established improvement in claimant's mental/physical impairments to the degree that claimant is now able to perform SGA.

The department has the burden of proof to show that claimant's mental/physical impairments have substantially improved to the point where claimant can now perform basic work activity.

PHYSICAL IMPAIRMENTS

The medical evidence of record (a physical examination dated April 20, 2007) listed the following diagnoses: Hypertension, benign, thrombosis of renal vein, and lupus. The physician further noted that the thrombosis of renal vein was stable however, claimant's lupus was worsening.

The recent History and Physical Report #6, dated September 11, 2008 notes that claimant has degenerative arthritis with past a vascular necrosis of bilateral hips and degenerative arthritis of the right knee. It also notes a history of lupus.

In the September 2008 report, the physician provides an assessment of:

- (a) Hip pain—bilateral hip pain due to a vascular necrosis/lupus uncontrolled.
- (b) Arthritis/knee requiring the use of pain medications (and benign essential hypertension.

A quick comparison of the 2007 physical examination to the 2008 physical examination shows that there has been virtually no improvement in claimant's arthritis; no improvement in his degenerative arthritis with past a vascular necrosis of bilateral hips and no improvement in claimant's renal thrombosis.

In summary, the department has not shown that claimant's physical impairments have improved to the point where claimant is now able to perform substantial gainful activity.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established marked improvement in claimant's physical impairments to the extent that he is not able to perform substantial gainful activity PEM 260/261.

Accordingly, the department's proposed termination of claimant's MA-P/SDA is, hereby, REVERSED due to the department's failure to meet its burden of proof by showing that claimant is now able to work.

SO ORDERED.

/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:

