

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: 2009-14908
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2009
Ingham 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 19, 2009 in Lansing. Claimant personally appeared and testified under oath.

The department was represented by Gayle Vail (AP Supervisor).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

(1) Did the 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 (October 27, 2008) who was denied by SHRT (March 20, 2009) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.22 and 20 CFR 4163920(a)(f).

(2) Claimant's vocational factors are: age—54; education—high school diploma, post-high school education—one semester at [REDACTED]; work experience—roofing and siding technician and grounds crew for [REDACTED] contractors.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since November 2008.

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

- (a) Hepatitis C;
- (b) Poor concentration;
- (c) Chronic back pain;
- (d) Poor memory;
- (e) Prostate cancer;
- (f) Back pain.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 20, 2009)

SHRT decided claimant was able to perform unskilled medium work. SHRT evaluated claimant's disability using SSI Listings 1.01 and 12.01. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on 20 CFR 416.92

(a)(f).

(6) Claimant lives with his spouse and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), grocery shopping (needs help).

Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not use

braces. Claimant did not receive any inpatient hospital services in 2008 or 2009. Claimant did have some outpatient treatments.

(7) Claimant does not have a valid driver's license and does not drive an automobile.

Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) An [REDACTED] was reviewed.

The physician provided the following background:

On [REDACTED], this 54 year-old white male presented to the [REDACTED]. The purpose of today's visit was to further evaluate an episode of acute urinary retention. This patient was subjected to interstitial brachytherapy seed implantation on January 2, 2007. He required a formal PVP green light laser prostatectomy to remove obstructive tissue from his prostate on May 11, 2007.

On [REDACTED], he presented to the [REDACTED] complaining of "difficulty peeing." While waiting to be seen, the patient was able to spontaneously void and he believes he completely emptied his bladder. He reports having significant decrease in the force and caliber of his urinary stream in the weeks prior to his ER visit. On [REDACTED], he represented to the [REDACTED] and required a formal catheterization with a coude catheter. 600 ml of urine was drained from his bladder.

At today's office visit his Foley catheter was removed. He will temporarily use Uroxatarol daily. He will also continue using Bactrim DS, until the time of definitive intervention. This patient may very well experience another episode of acute urinary retention requiring an emergency room visit. He was fully counseled regarding this possibility prior to removing his Foley catheter in the office.

* * *

This patient may very well have not only obstructing tissue at the level of prostatic fossa, but perhaps even calcified brachytherapy C pellets. He was cautioned about the

possibility about future acute urinary retention at the time of his initial PVP. This patient adamantly refused a radical prostatectomy and would accept only interstitial brachytherapy seed implant as a treatment for localized prostate cancer. He has a known diagnosis, not only of localized adenocarcinoma of the prostate, but hepatitis C and D as well.

* * *

- (b) An October 29, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnoses: degenerative disc disease of the lumbar spine.

The physician provided the following limitations. Claimant may occasionally lift up to 10 pounds. He is able to stand/walk less than 2 hours in an 8 hour day. He is able to sit less than 6 hours in an 8 hour day. He is able to use his hands/arms for simple grasping. He is able to use his right hand for reaching, pushing/pulling and fine manipulating. Claimant has normal use of his legs. Claimant has the following mental limitations: memory, sustained concentration and reading/writing.

(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 show 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 occasionally. Claimant's ability to stand and walk is also limited, somewhat. The Medical Examination Report (DHS-49), dated October 29, 2008 states that claimant is able to do reaching, pushing-pulling and fine manipulating with his right hand. Claimant is able to do simple grasping with both hands. The medical record in this case indicates that claimant has significant physical limitations. The record indicates that claimant

has a limited ability to climb ladders and, to lift heavy weights and to stand for an entire 8 hour shift. However, at this time, there is no reliable medical evidence to establish a severe, disabling physical condition that totally precludes all work activities.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. His Social Security 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 that claimant is able to perform medium unskilled work activities.

The department evaluated the claimant's impairments using SSI Listings 1.01 and 12.01.

The department decided that claimant does not meet any of the applicable SSI Listings.

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, or 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 Listings 1.01 and 12.01. 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 last worked as a roofing and siding technician on a part-time basis. This work required claimant to climb ladders and carry large bundles of shingles up the ladder.

Based on claimant's current impairments, including spinal dysfunction and a limited ability to carry, he is not able to return to his previous job as a roofer and siding technician. 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/psychiatric 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. Although claimant alleges that he has difficulty concentrating, claimant did not provide any psychiatric evidence to evaluate this condition.

Second, claimant alleges disability based on COPD, depression, back pain, urinary incontinence, hepatitis C and prostate cancer. Claimant is currently receiving treatment for his prostate condition. The DHS-49, Medical Examination Report, dated October 29, 2008 reports a diagnosis of degenerative disc disease of the lumbar spine. Although the physician reports that claimant has a limited ability to lift, sit, stand and walk, he does not state, unequivocally that claimant is totally unable to work. The medical evidence in the record, at this time, does not preclude sedentary employment.

There is no medical evidence to establish that the cancerous growth on his liver will totally prevent him from doing any work.

During the hearing, claimant testified that a major impediment to his return to work was back pain. Evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

Finally, claimant testified that a major impediment to his return to work was his back pain related to his degenerative disc disease of the lumbar spine. 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 several activities of daily living, has an active social life with his wife and cares for a dog, 2 cats and a calf.

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].

Because of the handicapper laws recently enacted in the United States, there are many jobs available for persons with handicaps similar to claimants.

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: March 12, 2010

Date Mailed: March 12, 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.

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:

