

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: 2009-16497
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2009
Ionia 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 June 10, 2009, in Allegan. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Steve Speiser (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team on June 12, 2009. Claimant waived the timeliness requirement so 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) 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 (November 19, 2008) who was denied by SHRT (April 13, 2009) based on claimant's ability to perform unskilled sedentary work. SHRT relied on Med-Voc Rule 201.18.

(2) Claimant's vocational factors are: age—49; education—9th grade; post high school education—none; work experience—debarker operator for [REDACTED], foreman at [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since 2007 when he was a machine operator at [REDACTED].

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

- (a) Pain in left foot;
- (b) Numbness in left foot;
- (c) Inability to stand for long periods;
- (d) Inability to walk for long periods;
- (e) Nerve compression;
- (f) Two herniated discs.

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

OBJECTIVE MEDICAL EVIDENCE (April 13, 2009):

SHRT decided that claimant was able to perform unskilled sedentary work. SHRT evaluated claimant's eligibility using SSI Listings 1.01 and 11.01. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on 20 CFR 416.909 due to claimant's ability to conform other work.

(6) Claimant lives with his wife and performs the following activities of daily living: dressing (needs help), bathing and grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately five times a month. Claimant is not computer literate.

(8) The following medical reports are persuasive:

(a) An October 28, 2008 neurosurgery narrative report was reviewed.

The neurosurgeon provided the following background:

* * *

Claimant complains of low back pain with pain down the left lower extremity all the way to the foot with his foot going to sleep. He noted some weakness after three to five minutes of standing on the left and it starts to tingle. He has had symptoms for approximately three years. The symptoms are much worse than the last month. He states one year ago he had a herniated disc and did well with pain injections. The pain is 6-7/10. When standing, it increases the pain. He denies any specific injury. Pain pills seem to help him. He denies any bowel or bladder problems.

He is employed by [REDACTED] and debarks logs and he is working. He had an MRI which I reviewed the report, thank you for sending me the same. He has not had the injections or physical therapy recently, but I told him it is available to him, if he so desires.

* * *

On neurological exam, the patient is well developed, well nourished and well groomed. Patient is alert and oriented to time, person and place. Recent and remote memory seems to be within normal limits. Attention span and concentration seem to be quite good. Speech was good. Cranial nerves to: visual fields seem to be within normal

limits. 3, 4 and 6 pupils are equal and reactive to light. Extraocular movements are within normal limits. 5: facial sensation and masseters are within normal limits. 8: hearing, voice and finger rub within normal limits. 9: good phonation palate arch as well. 11: trapezius and shoulder shrug within normal limits. 12: tongue protrudes in midline. No Babinski's, no clonus. Finger-to-nose and rapid alternating movements are within normal limits. Heel to shin is within normal limits. Motor exam seems to be adequate. Sensory exam is also adequate. Sensory exam is also adequate. Reflexes were symmetrical. Gait is antalgic, he walks with a limp. Station is normal. Muscle, strength and tone in the upper and lower extremities are normal. Fundoscopic exam, no papilledema and no hemorrhages. Straight leg raising pronounced primarily, back pain and hip pain.

* * *

The neurologist did not state the claimant is totally unable to work based on his neurological impairment.

(9) There is no probative psychological evidence in the record to establish an acute (non-exertional) mental condition which is expected to prevent claimant from performing all customary work functions for the required period of time. Claimant does not allege disability based on mental impairment. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all types of customary work functions for the required period of time. Claimant testified that he has pain in his left foot, numbness in his left foot, inability to stand for long periods, inability to walk for long periods and two herniated discs. The neurological exam, dated October 28, 2008, indicates a normal neurological exam. The neurologist did not state the claimant is totally unable to work due to his neurological impairments.

(11) Claimant recently applied for SSI benefits. The Social Security Administration 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.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled sedentary work. The department evaluated the claimant's impairments using SSI Listings 1.01 and 11.01. The department determined that claimant does not meet the requirements of the applicable listings.

The department commented that claimant's application was denied based on his ability to perform past work or to perform other work based on Vocational Rule 201.18.

LEGAL BASIS

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 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 or has which lasted for at least 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 the 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 debarker for a crate company. This was heavy work.

The medical evidence of record establishes that claimant has disc dysfunction and is unable to stand for long periods of time. Since claimant is unable to perform the duties of his previous work as a debarker, he is unable to return to that work. Therefore, claimant meets the Step 4 disability test.

STEP #5

The issue at Step 5 is whether claimant has a residual functional capacity (RFC) to do other work.

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that his combined impairments meet the department's definition of disability for MA-P purposes. First, claimant does not allege disability based upon a mental impairment. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on chronic pain in the left foot, chronic numbness in the left foot, inability to stand/walk for long periods and two herniated discs. The neurological report, dated October 28, 2008, basically shows a normal neurological exam. The neurologist did not state the claimant was unable to work based on his neurological impairment.

Third, claimant testified that a major impediment to his return to work was his chronic leg/foot 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 the combination of his impairments. Claimant performs several activities of daily living, has an active social life with his wife and drives an automobile approximately five times a month. Claimant was mentally alert and able to represent himself confidently at the hearing.

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 theater, parking lot attendant and as a greeter for [REDACTED]. Work of this type will afford the claimant a sit-stand option.

Based on 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.

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

Date Signed: March 5, 2010

Date Mailed: March 8, 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 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

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cc:

