

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: 2009-19130
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2009
Genesee 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 on July 29, 2009 in Flint. Claimant personally appeared and testified under oath.

The department was represented by Carol Bergeron (ES).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on July 31, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, 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/Retro/SDA applicant (January 29, 2009) who was denied by SHRT (May 1, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. The department relied on Med-Voc Rule 201.82. Claimant requests retro-MA for November and December 2008.

(2) Claimant's vocational factors are: age—43; education—10th grade, post-high school education—GED, attended [REDACTED]; work experience—chore services provider for mother, packer for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when he was a chore services provider for his mother.

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

- (a) Unable to stand for long;
- (b) Unable to use right hand;
- (c) Right wrist dysfunction;
- (d) Unable to buy groceries;
- (e) Chronic back, leg and feet pain;
- (f) Osteoarthritis.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 1, 2009)

SHRT decided that claimant was able to perform other work. SHRT evaluated claimant's impairments using all the SSI Listings at 20 CFR 404, Subpart P, Appendix. SHRT decided claimant does not meet the applicable Listing. SHRT denied disability based on Med-Voc Rule 201.18.

(6) Claimant lives with his brother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), vacuuming (needs help), mopping (sometimes), laundry (sometimes) and grocery shopping. Claimant uses a cane on a daily basis. He uses a walker 4 times a month. He uses a shower stool 3 times a month. He does not use a wheelchair. Claimant wears a brace on his right arm 5 days a month and a brace on his left arm 2 days a month. Claimant did not receive inpatient hospital in 2008 or 2009.

(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) A February 2009 Medical Examination Report (DHS-49) was reviewed. The physician provided the current diagnosis: (a) hypertension; (b) dyslipidemia; (c) gout; (d) chronic alcohol use.

The physician noted the following laboratory/x-ray findings: degenerative changes of bones of the right foot.

The physician reported the following physical limitations. Claimant is able to lift 10 pounds frequently. He is able to lift 50 pounds occasionally. Claimant is able to stand/walk 2 hours in an 8 hour day. Claimant is able to use his hands/arms normally. Claimant is able to use his feet/legs normally.

- (b) A February 4, 2009 Medical Needs Form (DHS-54A) was reviewed. The physician states claimant does not have a with his personal care activities. Claimant is able to work at his usual occupation. Claimant can work any job that does not involve prolonged standing.

- (c) A January 21 2009 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnosis: advanced osteoarthritis of feet, arm and knees.

The physician provided the following physical limitations: Claimant is able to lift less than 10 pounds occasionally.

He is able to stand/walk less than 2 hours in an 8 hour workday. He is able to use his hands/arms for simple grasping, pushing/pulling and fine manipulating. He is able to use his hands/arms for simple grasping, reaching and fine manipulating. He is not able to use his hands/arms for reaching. He is not able to use his feet/legs to operate foot controls. The physician notes that claimant has severe pain with weight bearing and walking due to advanced arthritis.

- (d) A January 28, 2009 Medical Needs Form (DHS-54A) was reviewed. The physician states the following diagnoses: osteoarthritis of the feet and gout.

The physician opined that claimant needs medical assistance with personal care activities but does specify which activities.

The physician states that claimant cannot work at his usual occupation and cannot work at any job.

Note: Claimant's arthritis specialist has given less than sedentary work restrictions, based on claimant's physical impairments (osteoarthritis). However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record.

* * *

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any psychiatric examinations to establish a mental impairment. Also, 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 expected to prevent claimant from performing all customary work functions for the required period of time. While it is true that claimant's arthritis specialist reports that claimant is totally unable to work, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her 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 normal work activities.

The department evaluated claimant's impairments using the SSI Listing 20 CFR 404, Subpart P, Appendix. 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, has existed for a continuous period of 12 months, and prevents all basic work activities.

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 *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. SHRT evaluated claimant's impairments using all the Listing in CFR 404, Subpart P, Appendix. SHRT decided claimant does not meet applicable SSI Listing.

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 chore services provider for his mother. Claimant's previous work was medium work.

Except for the Medical Source Opinion (MSO) there is conflicting evidence about claimant's ability to work. The recent medical examination report (February 4, 2009) states that claimant can lift up to 10 pounds frequently. The consulting physician also states that claimant can stand at least 2 hours in an 8 hour workday. Finally, the consulting physician reports that claimant has normal use of his hands/arms and his feet/legs.

Due to the conflict in the medical evidence, the Administrative Law Judge decides claimant is unable to perform the heavy work required of a chore services provider, 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 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 disorder. There is not psychological/psychiatric evidence in the record to establish a medical impairment. Also, claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a physical impairment: Osteoarthritis of the legs; inability to stand for long periods, inability to use his right hand, and inability to go grocery shopping. The evidence provided by claimant's arthritis specialist states that claimant is totally unable to perform any work. However, this Medical Source Opinion (MSO) cannot be given controlling weight because it is contrary to the great weight of the medical evidence in the record. The consulting physician who provided a recent report (February 4, 2009) states that claimant is able to lift 10 pounds frequently and able to stand/walk at least 2 hours in an 8 hour workday. The consulting physician also reports that claimant has normal use of his hands/arms and feet/legs.

Third, claimant testified that a major impediment to his return to work was his bilateral knee and leg pain secondary to his osteoarthritis. 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 and has an active social life with his brother.

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 at a theatre, as a parking lot attendant, and as a greeter at [REDACTED]

It should be noted that when physicians provide conflicting evidence about a possible disability, the most recent reports must be given greater weight.

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 15, 2010

Date Mailed: March 15, 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

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