

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: 2009-20534
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 11, 2009
Berrien 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 11, 2009 in Benton Harbor. Claimant personally appeared and testified under oath.

The department was represented by Cathy D. Ridder (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/Retro/SDA applicant (December 3, 2008) who was denied by SHRT (May 11, 2009) based on claimant's ability to perform a wide range of light work. SHRT relied on Med-Voc Rule 202.30 as a guide. Claimant requests retro-MA for September, October and November 2008.

(2) Claimant's vocational factors are: age—24; education—high school diploma, post-high school education—2 semester at [REDACTED], majoring in [REDACTED]; work experience—press operator for [REDACTED] truck driver assistant and [REDACTED] loader.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since September 2008 when he was a press operator for [REDACTED].

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

- (a) Status post left hand fracture (September 2008);
- (b) Status post left hand surgery (September 2008);
- (c) Dislocated left elbow;
- (d) Pinched nerve;
- (e) Surgery is recommended to correct claimant's left nerve impairment.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 11, 2009)

SHRT decided that claimant was able to perform a wide range of light work. SHRT evaluated claimant's impairments using all SSI Listings at 20 CFR 404, Subpart F, Appendix. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on 20 CFR 416.909 due to claimant's ability to perform light work.

(6) Claimant lives with his grandparents and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing (sometimes), vacuuming and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does wear a "sleeve" on his left side on a daily basis in order to sleep. Claimant did not receive inpatient hospital care in 2008 or 2009. He did have 2 outpatient surgeries on his fractured left hand to repair the fractures in his left hand in September and November 2008.

(7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

- (a) A [REDACTED] was reviewed. The surgeon provided the following diagnoses: Left hand wound (complicated), multiple fractures, carpal tunnel syndrome.

The physician states that claimant had a medical need for assistance with activities of daily living from September through October 2008. Under Explanation, the physician provided the following information: Last office note of November 12, 2008 states "patient will always have stiffness in his fingers (left) and if he continues to have pain, he may require the fusion of the left index PIP joint.

The physician did not state that claimant is totally unable to perform all work activities.

- (b) A December 11, 2008 Medical Examination Report (DHS-49) was reviewed. The physician states the following history:

Claimant involved in altercation on September 26, 2008 and suffered left dislocated elbow and left multiple hand fractures (displaced).

The physician reports the following limitations:

Claimant is able to lift 10 pounds occasionally. He is able to stand/walk about 6 hours in an 8 hour workday. He is able to

sit about 6 hours in an 8 hour workday. He is able to use his right hand for simple grasping, reaching, pushing/pulling and fine manipulating. He is unable to use his left hand to perform those activities. Claimant has normal use of his feet/legs.

The physician provided the following information:

Claimant attending occupational therapy 3X weekly and is predicted to always have stiffness in the left hand and may require future surgery to fuse the index PIP joint. Claimant to continue aggressive range of motion exercises.

- (c) A [REDACTED] surgical report from the [REDACTED] Center was reviewed.

The surgeon provided the following background:

I had the pleasure of seeing claimant today in consultation. As you know, he is a 23-year-old, left-handed gentleman who was Involved in an altercation. He does not remember what happened. He was seen in [REDACTED] early this morning and he was noted to have a dislocated elbow with multiple fractures of the left hand and fight bites. He had the elbow reduced by orthopedics. I told them to wash out the wound, placed him on antibiotics and see him today. Claimant denies any previous injuries.

On examination of his left arm, he does have a posterior splint on. This was removed. He is quite swollen over the elbow. He holds it in 30 degrees of flexion however, he has good active and passive range of motion.

On examination of his left hand, he is very swollen throughout all digits. He has an open wound transverse at the proximal phalanx of the ring finger and an open wound at the middle finger at the tip. His sensation is intact throughout all digits. He has good range of motion of his wrists. I did review his x-rays, PA, lateral and oblique views; these show a posterior dislocated elbow status post reduction.

X-rays of his hands shows multiple fractures at the base of the third and fourth metacarpal, the fifth metacarpal neck, distal phalanx of the middle finger, proximal phalanx of the ring finger and middle phalanx of the middle finger. These are open.

IMPRESSION: Left hand multiple wounds with open fractures.

- (d) A [REDACTED] narrative progress note was reviewed.

The surgeon provided the following information:

Claimant is here for follow-up of his multiple fractures of his hands status post percutaneous pinning. He also had elbow dislocation. He states no pain; however, he has limited range of motion of his fingers and crepitation at his index finger. He is doing well with his elbow.

On examination today he is able to flex his elbow through 130 degrees, and lacks approximately 15 degrees of full extension. He has very limited range of motion of his fingers. He is only able to flex at the MP joint approximately 30-40 degrees and the PIP joint, 40 degrees. He does have crepitation on flexion of the PIP joint of his index finger. I did get x-rays, PA, lateral and oblique views. These show healing fractures. He does appear to have some displacement of the condyle of the proximal phalanx of the index finger on the lateral view.

IMPRESSION: Multiple fractures of the left hand and limited motion.

PLAN: I explained to claimant that unfortunately he does have some displacement of the fracture over the proximal phalanx, and possible early a vascular necrosis. I stated that he will always have stiffness in his fingers, and if he continues to have pain, he may require fusion of the index finger PIP joint. At this point, I would like to have him continue with aggressive passive range of motion exercises to see if we can increase his range of motion.

* * *

- (9) There is no probative psychological evidence to establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant does not allege disability based on a mental

impairment. 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. Claimant testified that he has very little use of his left hand. He also testified that he has dysfunction in his elbow and a pinched nerve. A [REDACTED] [REDACTED] provides the following diagnoses: Left hand wound (complicated); left carpal tunnel syndrome. The medical reports provided by claimant's physicians do not state that claimant is totally unable to work.

(11) Claimant has not applied for federal disability benefits with the Social Security Administration.

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. Claimant thinks he is entitled to disability benefits because he needs additional surgery on his left hand and also possible surgery to correct his pinched nerve.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform a wide range of light work.

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

Based on claimant's vocational profile [younger individual with a high school education] the department denied MA-P using Med-Voc Rule 202.2 as a guide.

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.

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 machine operator for [REDACTED].

The medical evidence of record establishes that claimant has severe functional limitations with his left hand, and is substantially unable to perform work requiring 2 hands.

Since claimant's work at [REDACTED] requires 2 hands, he is unable to return to his previous work.

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 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 his limited ability to perform work functions with his left hand, a pinched nerve and left elbow dysfunction. These conditions prevent claimant from performing work that requires continuous use of the bilateral hands. Although claimant is precluded from heavy lifting, the medical evidence of record does not show that claimant is totally unable to perform any work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant performs a significant number of activities of daily living, has an active social life with his grandparents and other friends, drives an automobile approximately 12 times a month and 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, claimant is physically able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

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. It appears at this time claimant is not able to use his left hand for bilateral work activities. However, even without the use of his left hand, claimant is able to perform many types of sedentary work. Because of the handicapper laws recently enacted in the United States, there are many jobs available for persons with handicaps similar to claimants.

Also, claimant has 2 semesters at [REDACTED] and would be able to return to school, if he so desired.

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: September 18, 2009

Date Mailed: September 21, 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:

