

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: 2009-21154

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 24, 2009

St. Clair 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 24, 2009, in Port Huron. Claimant personally appeared and testified under oath.

The department was represented by Rose Alver (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 (January 13, 2009) who was denied by SHRT (May 19, 2001) based on claimant's failure to submit sufficient evidence to establish disability. Claimant requests retro MA for October, November and December 2008.

(2) Claimant's vocational factors are: age--45; education--high school diploma, post-high school education--none; work experience--painter for a restaurant, line worker for a coating factory, chrome inspector for a parts factory.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005, when he worked as a painter for a restaurant.

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

(a) Diabetes.

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

OBJECTIVE MEDICAL EVIDENCE (May 19, 2009)

SHRT decided that claimant's medical evidence was insufficient to establish a disability. SHRT evaluated claimant's disability using SSI listings 9.01, 5.01 and 12.01. SHRT decided that claimant does not meet any of the applicable SSI listings. SHRT denied disability based on claimant's failure to submit adequate persuasive medical evidence.

* * *

(6) Claimant lives with friends who own a farm and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair, or a shower stool. He does not wear braces. Claimant was hospitalized in 2008 for stomach dysfunction and to obtain gallbladder surgery.

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

(8) The following medical records are persuasive:

(a) A January 13, 2009 Medical Examination Report (DHS-49) was reviewed.

The endocrinologist provided the following current diagnosis: (1) Attention Deficit Disorder; (2) Type I Diabetes. The endocrinologist did not report any limitations on claimant's ability to lift, stand, walk or sit. He stated that claimant was able to use his hands/arms normally and his feet/legs normally.

The endocrinologist did report the following mental limitations: comprehension, memory, and sustained concentration.

(b) A [REDACTED] letter was reviewed.

The rehabilitation counselor provided the following background:

Your case is being closed with [REDACTED] because you indicated you do not have transportation to participate in the [REDACTED] situational assessment, because public transportation does not come close enough to your place of residence and you are too weak to walk to the designated bus stop. You indicated you will contact our office should your situation change in the Spring, to have your case re-opened.

* * *

(c) A [REDACTED] was reviewed.

The rehabilitation specialist provided the following background:

Claimant was referred for a [REDACTED] by Michigan Department of Labor and Economic Growth to assess: physical and psychomotor capacities, i.e. ability to work a full day, any physical complaints, physical stamina; ability to work all day within limitations; emotional

stability, i.e. the ability to deal with conflict, adapt to change, to deal with stress, response to co-workers and supervision; the ability to function at the job without allowing personal, social or work history to interfere; work habits, i.e. punctuality, attendance, concentration, organization and interpersonal skills; assessment of the most effective method of instruction, i.e. response to verbal instruction, to demonstration, to written instruction; potential to benefit from further services. Claimant's job station for his situational assessment was focused on assembly/production, however; he did work in the attendance center and as a truck helper when needed.

* * *

The rehabilitation specialist provided the following summary:

Claimant has completed his Evaluation Program at [REDACTED]. Claimant was present every day of his 4-week assessment. His hygiene and grooming were good. He was a conscientious, dependable worker. Claimant worked at the [REDACTED] and as a truck helper the first week of assessment. This is not rated. However, due to his returning from gallbladder surgery and short recovery, he only did sedentary piece/rate simple assembly production for the remaining three weeks of his assessment. His overall average rating of production is only 51%, and not competitive for immediate employment at this time. His quality was good and maintained. [Claimant] COMPLETED SUCCESSFULLY all tasks assigned to him and is capable of working independently once he has been trained on tasks.

* * *

(d) A November 19, 2008 hospital record was reviewed. The principle diagnosis reported by the hospital physician is as follows:

- (1) Gastroenteritis;
- (2) DKA;
- (3) Medical noncompliance; and
- (4) Opiate dependency.

(9) There is no recent psychological evidence in the record 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 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 customary work functions for the required period of time. Claimant testified that he was unable to work due to his diabetic condition. The physicians who evaluated him did not report that he was unable to work due to his diabetes.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. His application is currently pending.

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 failed to establish a severe impairment that would qualify him for disability benefits.

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 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, has existed 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 have satisfied 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 last worked as a painter for a restaurant. This was light work.

The evidence of record establishes that claimant has diabetes and recently had gallbladder surgery. However, the medical evidence of record at this time, does not establish that claimant is totally unable to work. Since claimant's work as a painter for a restaurant was light work, he is able 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 a preponderance of 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. Also, claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on his chronic diabetes and recent gallbladder surgery. The medical evidence of record does establish that claimant is not able to do heavy lifting until he completely recovers from his gallbladder surgery. 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 an extensive number of activities of daily living, has an active social life with the people he works for on the farm, and drives an automobile six times a month. 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].

It is important to note at this time, that claimant is providing homemaker services for the family he lives with on the farm.

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: September 24, 2009

Date Mailed: September 25, 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/cv

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