

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: 2009-22014
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 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, a telephone hearing was held on June 30, 2009, in Flint. Claimant personally appeared and testified under oath.

The department was represented by Lauren Mickle (ES).

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 (June 10, 2008) who was denied by SHRT (May 25, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.13 as a guide. Claimant requests retro MA for March, April and May 2008.

(2) Claimant's vocational factors are: age--54; education--high school diploma, post-high school education--none; work experience--construction laborer for a school builder, day laborer for various construction companies.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since September 2007, when he was a construction laborer for a school building contractor.

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

- (a) Status-post car accident;
- (b) Status-post broken back (1980);
- (c) Chronic back pain;
- (d) Hypertension (HYP);
- (e) Arthritis;
- (f) Neuropathy;
- (g) Limited ability to stand (10 minutes max);
- (h) Family physician reports that claimant is disabled due to neuropathy.

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

OBJECTIVE MEDICAL EVIDENCE (May 25, 2009)

The internal evaluation noted claimant had a normal range of motion. He ambulated with some stiffness and used a cane. His height is 5' 4" and weight 190 pounds. (page 78-79) An x-ray of the ankle showed a healed fracture with degenerative changes. (page 80) His blood pressure was 136/93.

ANALYSIS: The examination reported he ambulated with a cane, however, he was able to get on and off the examining table without assistance. His blood pressure is controlled with medication. Claimant would be able to do simple, unskilled light work.

* * *

(6) Claimant lives with his sister and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry, and grocery shopping (needs help). Claimant uses a cane on a daily basis. He does not use a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant did not receive in-patient hospital care in 2008. In 2009, he was hospitalized for three days in June to obtain treatment for a back infection.

(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 [REDACTED] [REDACTED] [REDACTED] physician's integrated diagnostics report was reviewed.

The physician provided the following background: X-rays showed changes of old trauma with healed fractures involving distal tibia and fibula. They are noted with moderately advanced degenerative changes of the ankle joint. No acute fracture or dislocation is seen.

CONCLUSIONS: (1) Old fracture of tibia/fibula;
(2) degenerative changes of the ankle joint.

- (b) A January 26, 2009 internal medicine evaluation was reviewed.

The physician provided the following background:

Chief complaint: chronic back pain, hypertension and arthritis.

HISTORY: Claimant is a 53-year-old white gentleman who stated that in 1980, he sustained a fracture of his L3 vertebra. His back pain with arthritis started a couple years ago and got worse. In addition to that, now he has arthritis in the hip, shoulders and knees. Also, he has had hypertension for a few years and it has been controlled with medications.

* * *

The consulting internist provided the following impressions:

- (1) Chronic low back pain; consider degenerative joint disease. Rule out degenerative disc disease;
- (2) History of L3 lumbar fracture in 1980;
- (3) Essential hypertension;
- (4) Obesity.

The physician provided the following comment:

From standpoint of internal medicine, patient can do light duty with restriction. No heavy lifting, or excessive standing or bending. He needs all the help the state can provide for him.

* * *

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any clinical evaluations to establish a psychological 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 has back pain, hypertension, arthritis, neuropathy and an inability to stand. The consulting internist provided the following diagnoses: (1) chronic low back pain, considered degenerative joint disease; (2) history of L3 lumbar fracture in 1980; (3) essential hypertension; (4) obesity. The consulting physician stated: "From standpoint of internal medicine, patient can do light duty with restriction. (no heavy lifting, excessive standing or bending).

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal.

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 claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The department thinks the medical evidence of record shows that claimant retains the capacity to perform a wide range of simple, unskilled light work.

Based on claimant's vocational profile [approaching advanced age, 12th grade education and history of unskilled work], the department denied MA-P using Med-Voc Rule 202.13 as a guide.

The department denied SDA because the nature and severity of claimant's impairments do not preclude all unskilled work activity for 90 days.

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 disabled 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 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 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 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a laborer at a school construction site. This was heavy work.

The medical evidence of record establishes that claimant has a limited ability to lift and stand.

Since claimant's previous work as a laborer for a construction company required long hours of standing and lifting, he is unable to return to his previous work as a day laborer on a construction site. 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 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. Claimant did not provide any clinical evidence of a severe psychological impairment. Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on back pain, hypertension, arthritis, neuropathy in his legs, and a limited ability to stand. The medical evidence provided by the consulting internist shows the following: (1) Chronic low back pain, consider degenerative joint disease; (2) history of lumbar fracture in 1980; (3) essential hypertension; (4) obesity. The internist also stated that claimant can do light duty with restriction (no heavy lifting, excessive standing or bending).

Third, claimant testified that a major impediment to his return to work was his back pain and bilateral leg neuropathy.

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 performs a significant number of activities of daily living, has an active social life with his family and is able to help out with some of the chores around the house (mowing the lawn).

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled light 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]. Work of this type would afford 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: October 8, 2009

Date Mailed: October 12, 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

cc:

[REDACTED]