

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: 2009-22675
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 8, 2009
Jackson 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 July 8, 2009 in Jackson. Claimant personally appeared and testified under oath.

The department was represented by Don Baibak (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 29, 2009) who was denied by SHRT (June 1, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requested retro MA for October, November and December 2008.

(2) Claimant's vocational factors are: age—49; education—high school diploma; post high school education formerly a certified nurse aide; work experience—nursing aide at a hospital.

(3) Claimant has not performed substantial gainful activity (SGA) since 2004 when he worked as a nursing aide for the VA hospital.

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

- (a) COPD;
- (b) Sarcoidosis;
- (c) Back pain;
- (d) Hernias.

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

OBJECTIVE MEDICAL EVIDENCE (June 1, 2009)

On 3/2009, the physical examination the lung had prolonged expiration. There are also bilateral scattered rhonci. A pulmonary function test, from 3/2009 indicated FEV1 of 2.51 (Listing Level equals 1.35). His blood pressure was normal. An MRI of the cervical spine showed mild bulging (pages 25 to 26). He has a normal range of motion.

ANALYSIS:

Objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of light work.

(6) Claimant lives with his father and performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, cooking (sometimes), dishwashing (sometimes), light cleaning and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant received in-patient hospitalization in 2008 for COPD. Claimant received in-patient hospitalization in 2009 for COPD.

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

(8) The following medical reports are persuasive:

A [REDACTED] was reviewed.

The physician reported the following complaints:

- (1) I have sarcoidosis diagnosed five years ago;
- (2) Aggressively increasing shortness of breath for six years; worse for three years;
- (3) Headaches for ten years;
- (4) Lower back pain for ten years and neck pain for three years.
- (5) History of present illness: claimant is a 49-year-old male who worked as a nursing assistant at [REDACTED] for 12 years and in food services. He quit working in 2005 because of his medical problems.

Claimant states that he developed upper respiratory infection in 2003, which caused him to have bouts of cough. He was coughing phlegm and there were streaks of blood in his sputum. He progressively got worse and was diagnosed with severe bronchitis. He states his cough is so severe that he would get dizzy and see sparks in front of his eyes. He went to the emergency room and had a chest x-ray which showed a mass in the lung. He was seen in the pulmonary clinic and underwent bronchoscopy as well as mediastinoscopy. The biopsy showed no cancer, but sarcoidosis. He states he was diagnosed with at least Stage III of sarcoidosis of the lungs and was put on prednisone which made him gain weight.

* * *

He developed progressively increasing shortness of breath for the last five to six years. He states it has been worse for the last three years and more so when it is humid and warm. He has no known allergies, as such, and states he cannot walk. He can do his activities of daily living, but cannot vacuum or carry out other extended activities of daily living.

* * *

The consulting physician provided the following assessment:

- (1) Claimant is a 49-year-old male who has a diagnoses of sarcoidosis.... He does not really give a history of bronchial asthma, but has had recurrent bronchitis and bouts of cough which does indicate that he may have endobronchial lesion or chronic persistent bronchitis. He also has developed aggressively increasing shortness of breath, along with his cough and wheezing. His clinical findings are consistent with emphysema....
- (2) Nicotine dependence; he needs to quit smoking.
- (3) Chronic neck pain which is probably related to his right shoulder, as it is more so in the right side of his neck. Clinical examination is normal....
- (4) His headaches are anecdotal and probably related to stress.
- (5) His visual acuity is sharp and states after glasses he can see much better.

* * *

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide a clinical assessment of his mental status. 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 customary work functions for the required period of time. Claimant does have documented breathing dysfunction. A recent consulting physician provided the following diagnoses: (a) emphysema; (b) nicotine dependence (needs to quit smoking); (c) chronic neck pain; headaches which are anecdotal. The consulting physician did not report that claimant was totally unable to work. Claimant recently applied for SSI 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 Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department reports that according to the medical evidence, claimant retains the capacity to perform a wide range of light work.

The department denied MA-P eligibility based on claimant's vocational profile [younger individual, high school graduate and unskilled work history] based on Med-Voc Rule 202.20 as a guide.

The department denied SDA benefits based on PEM 261 because the nature and severity of claimant's impairments would not preclude work activity at the above-stated level for 90 days.

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 earning substantial income, he is not disabled for MA-P/SDA purposes.

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, the 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. The department did evaluate claimant's impairments using the SSI Listings. Claimant does not meet an applicable 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 last worked as a nurse aide for the [REDACTED]. Claimant's work as a nurse aide was medium work.

The medical evidence of record establishes that claimant has a significant pulmonary disease currently diagnosed as sarcoidosis and/or emphysema.

Based on claimant's breathing dysfunction, he is unable to perform the lifting and standing required of a nurse aide.

Since claimant is unable to return to his previous work as a nurse aide, he 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 submit any clinical evidence of a mental impairment. Claimant did not submit a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on COPD, sarcoidosis, back pain and hernias. A recent narrative report by a consulting physician (March 25, 2009) provided the following diagnoses: emphysema, nicotine dependence (needs to quit smoking), chronic neck pain, and anecdotal headaches. The consultant physician did not state that claimant was totally unable to work.

Third, claimant testified that a major impairment to his return to work was his chronic back 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 his combination of impairments. Claimant performed a significant number of activities of daily living (ADLs), has an active social life with his father and brother, drives an automobile approximately twice 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, he is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would provide claimant with 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: November 6, 2009

Date Mailed: November 9, 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.

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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

cc:

