

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: 2009-27892
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 27, 2009
Presque Isle 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 August 27, 2009, in Rogers City. Claimant personally appeared and testified under oath.

The department was represented by Susan Babcock (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) The claimant is an MA-P/SDA applicant (November 19, 2008) who was denied by SHRT (July 9, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.21 as a guide.

(2) Claimant's vocational factors are: age--45; education--high school diploma; post high school education--two semesters at [REDACTED] (Electronics major); work experience--heavy equipment operator, environmental reductions camera operator, millwright, and machine installation technician.

(3) Claimant has not performed substantial gainful activity (SGA) since 2007 when he was a heavy equipment operator.

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

- (a) Neurofibromatosis;
- (b) Lumbago;
- (c) Lumbar facet arthropathy;
- (d) Multi level spine disc disease;
- (e) Lumbar spine osteoarthritis;
- (f) Lumbar spine radiculopathy;
- (g) Thoracalgia;
- (h) Cervicalgia;
- (i) Cervical radiculopathy;
- (j) Left cubital tunnel syndrome;
- (k) Rotator cuff tendinitis, bilateral;
- (l) Cephalgia;
- (m) Right condromalacia patellae;
- (n) Chronic pain syndrome;
- (o) Thoracic syrinx;
- (p) Thoracic vertebral body hemangioma;
- (q) Lumbar vertebral body hemangioma;
- (r) Tachycardia;
- (s) COPD;
- (t) History of seizure activity;

- (u) Intention tremor;
- (v) Nocturnia
- (x) Bilateral auditory acuity deficits;
- (y) Tinnitus;
- (z) Urinary incontinence;
- (aa) Bowel incontinence;
- (bb) Bilateral onychomycosis;
- (cc) Mood disorder: depression;
- (dd) Mood disorder: anxiety;
- (ee) Sleep disturbance;
- (ff) Cognitive deficits;
- (gg) Evaluate for acoustic neuroma;
- (hh) Balance deficit;
- (ii) Evaluate for intracranial mass/tumors;
- (jj) Evaluate for cardiac valvular disease;
- (kk) Evaluate for thoracoulmar scoliosis;
- (ll) Gastroparesis;
- (mm) Pruritus;
- (nn) Evaluate for cataract;
- (oo) Bilateral visual acuity deficits;
- (pp) Nonrestorative sleep/hyposomnia;
- (qq) Bilateral soft tissue hamstring contractures.

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

OBJECTIVE MEDICAL EVIDENCE (July 9, 2009):

The department thinks that claimant is able to perform unskilled light work. 20 CFR 416.967(b). The department thinks that claimant is not eligible for MA-P/SDA under Med-Voc Rule 202.21, as a guide.

- (6) Claimant lives alone and performs the following activities of daily living: dressing, bathing, cooking, dishwashing, light cleaning, vacuuming (sometimes), laundry and grocery shopping. Claimant was not hospitalized in 2008 or 2009. Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces on his neck, arms or legs.

- (7) Claimant has a valid driver's license and drives an automobile 30 times a month. Claimant is computer literate.

- (8) The following medical records are persuasive:
- (a) On April 3, 2009, follow-up medical rehabilitation evaluation was reviewed.
 - (b) The physiatrist provided the following background:

Complaint: posterior neck pain, distal upper/lower extremity numbness, parasthesia and dysesthesia, upper extremity weakness, mid-lower back pain, tinnitus, balance deficits, poor concentration and sleep difficulty secondary to pain.

- (c) Claimant is seen in medical rehabilitation follow-up. Claimant is a pleasant 45-year-old right handed, white male who presents with an eight-year history of progressive posterior neck pain, distal upper/lower limb numbness, parasthesia and dysesthesia upper extremity weakness, mid-low back pain, tinnitus, balance deficits, poor concentration and sleep difficulty secondary to pain. Claimant indicates that he has remained compliant with prescribed conservative medical interventions: NSIAD use, narcotic analgesic medication and ADL modifications. He does not apply heat/ice due to the lack of perceived benefit, as well, he does not routinely perform a home stretching and exercise program, purportedly secondary to symptom exacerbation. To date, claimant reports no significant sustained interval improvement and ongoing posterior neck or upper extremity symptomatology.

Claimant indicates that for the last three days he has experienced both short bursts of pain and headache in the rear side of his head. The pain reportedly lasts approximately 30 minutes without the use of additional analgesic medication.

* * *

On this visit, claimant reports that most of his pain involves his lower back. Pain is described as ‘achy,’ ‘sharp,’ ‘throbbing,’ ‘stabbing,’ ‘shooting,’ ‘gnawing,’ ‘burning,’ ‘tingling,’ ‘pinching,’ ‘cramping,’ ‘pins and needles,’ and ‘electric-like.’

On exam, the physician reported the following: Overall, cervical spine active range of motion is full, no obvious instability.

* * *

Intact vibration and proprioception sensation throughout. No muscle asymmetry or atrophy. No shoulder depression. His gait remains nonantalgic with normal station. Slowed cadence. No foot drop identified. Normal posture.

* * *

The physiatrist provided the following assessment:

- (1) Cervicalgia;
- (2) Cervical radiculitis;
- (3) Rotator cuff tendinitis;
- (4) Cephalgia;
- (5) Neufibromatosus;
- (6) Lumbago;
- (7) Lumbar facet atrophy;
- (8) Multilevel lumbar spine degenerative Disc disease;
- (9) Lumbar radiculopathy;
- (10) Thoracalgia;
- (11) Multilevel thoracic disc herniation;
- (12) Thoracic syrinx;
- (13) Chronic pain syndrome;
- (14) History of seizure activity;
- (15) Intention tremors;
- (16) Bilateral auditory acuity deficits;
- (17) Tinnitus;
- (18) Cognitive deficits;
- (19) Evaluate for acoustic neuroma;
- (20) Balance deficits;
- (21) Urinary incontinence;
- (22) Bowel incontinence;
- (23) Mood disorder: depression;
- (24) Mood disorder: anxiety;
- (25) Sleep disturbance

The physiatrist did not state that claimant was totally unable to work.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not provide a recent psychiatric examination.

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 reported diagnosis as delineated in Paragraph #4, above. The recent examination by his psychiatrist specified the diagnoses listed in Paragraph 8B, above. The recent report (April 3, 2009) by the psychiatrist does not indicate that claimant is totally unable to work.

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

(12) Claimant's family physician has authorized claimant to use marijuana for medical/pain reduction purposes.

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 that claimant has a Residual Functional Capacity (RFC) to perform unskilled light work.

The department denied claimant's MA-P/SDA benefits based on Med-Voc Rule 202.1, 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).

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 MA-P/SDA programs. 20 CFR 416.927(e).

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 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 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 medical/vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, the 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. Unless an impairment which is expected to result in death, it must have existed, or be expected to exist for a continuous period of at least 12 months. 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).

The claimant does not have an impairment or combination of impairments that profoundly limit his physical/mental ability to do basic work activities; he does not meet the Step 2 criteria.

However, under the *de minimus* rule, claimant meets the severity and duration requirements and the Step 2 criteria.

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.

However, SHRT evaluated claimant's eligibility using SSI Listing 1.01. Claimant does not meet any of the applicable 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 heavy equipment operator.

This work required claimant to sit in the vehicles he was operating for an eight-hour shift and also to provide basic maintenance and other items required to keep the equipment operating.

Claimant's previous occupation as a heavy equipment operator would be classified as light work.

The medical evidence provided by claimant's psychiatrist does not establish that claimant is totally unable to return to his job as a heavy equipment operator.

Therefore, claimant has not met his burden of proof to establish that he is unable to return to his prior work as a heavy equipment operator.

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/psychological evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental impairment: mood disorder: depression and mood disorder: anxiety. Claimant did not provide a current, probative clinical examination by a psychologist or a psychiatrist to establish his mental status for employment purposes. Furthermore, claimant did not submit a DHS-49D or DHS-49E to establish his mental residual functional capacity. For these reasons, claimant is not entitled to MA-P/SDA based on his mental impairments.

Second, claimant alleges disability based on neck pain, distal upper/lower extremity numbness, parasthesia and dysesthesia, upper extremity weakness, mid-lower back pain, tinnitus, balance deficits, poor concentration and sleep difficulty secondary to pain. The physiatrist's (April 3, 2009) report does not state that claimant is totally unable to work based on his physical impairments. The physiatrist noted that, "Overall, cervical spine and active range of motion is full." The physiatrist also reported intact vibration and proprioception sensation throughout. No muscle symmetry or atrophy. No shoulder depression. His gait remains nonantalgic with normal station. Slow to cadence. No foot drop identified. Normal posture. The report of the physiatrist does not sustain claimant's burden to establish that he is totally unable to work.

Third, claimant alleges disability based on neck pain, upper/lower extremity numbness and parasthesia. 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 profoundly 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. Currently, claimant performs an extensive list of

activities of daily living, has the ability to drive his automobile approximately 30 times a month, works in the yard, 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). Claimant is able to work as a ticket taker for a theater, 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 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 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: February 25, 2010

Date Mailed: February 25, 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 receipt date of the rehearing decision.

WAS/tg

cc:

