

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: 2010-10538
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 24, 2010
Mecosta 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, an in-person hearing was held on February 24, 2010, in Big Rapids. Claimant personally appeared and testified under oath.

The department was represented by Patricia McHugh (FIM).

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 (May 5, 2009) who was denied by SHRT (December 23, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.21 as a guide. Claimant requests retro MA for February, March and April 2009. The record closed on February 24, 2010 and the disputed eligibility period is May 5, 2009 through February 24, 2010.

(2) Claimant's vocational factors are: age--45; education--11th grade; post high school education--GED; work experience--foreman for [REDACTED], licensed pesticide applier.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he was injured in a motor vehicle accident.

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

- (a) Status post broken back (motor vehicle accident 2006);
- (b) Diabetes;
- (c) Status post myocardial infarction (2009);
- (d) Status post back surgery (2009);
- (e) Back pain;

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

OBJECTIVE MEDICAL EVIDENCE (December 23, 2009)

Claimant is alleging disability secondary to broken back, diabetes and myocardial infarction (MI). Claimant did suffer a non-ST (MI) in March 2009. This was a one-vessel occlusion.

This was a one-vessel occlusion which was stented. Claimant has a history of poorly controlled diabetes with no other secondary disease processes beyond the aforementioned MI. Claimant has had a lumbar fusion (page 421) with successful results. Claimant does complain of ongoing pain, but recent (page 392) examination shows claimant retains full range of motion and no orthopedic limitations.

ANALYSIS:

The medical evidence shows that it is reasonable to assume that the claimant would be limited to performing light exertional tasks.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), light cleaning, and grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant does wear a back brace approximately eight times a month. Claimant received inpatient hospital care in 2009.

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

(8) The following medical records are persuasive:

(a) An [REDACTED] Evaluation report was reviewed.

The internist provided the following history: Claimant is a 45-year-old male who presents today for evaluation of back pain since 2006 and heart problems.

Claimant states in 2006 he had a motor vehicle accident in which he was in the back seat of a car and was thrown to the front seat. After the accident, he checked on the other driver and removed an axle from the road. He noticed subsequent to the accident having severe low back pain. He was treated by his family practice doctor and then by a surgeon who did a laminectomy/fusion, as well as subsequent surgery to treat the heart murmur. Claimant states that while his low back pain, which radiates into his right leg, did improve after the surgery, he has had persistent low back pain. He takes Vicodin which does take the edge off. He did try Percocet previously, however, they were too strong and despite taking care of his pain, he was unable to function and too sleepy during the day time. He states he now has persistent pain and can only sit, stand and/or walk for 15 minutes. He can consistently lift about

five pounds without pain. He's had x-rays, CAT scans, and MRIs in the past. He does not use a cane or a walker. He states as a result of his back pain, he has difficulty with dishes, shopping, walking, going upstairs, standing or sitting for any extended period of time.

Claimant also states that he had a myocardial episode in March of 2009 with substernal chest pain that he described as heaviness with radiation to his left arm and was associated with shortness of breath and diaphoresis, as well as being red faced. He states he has had one reoccurrence of his chest pain while sitting and took some Nitroglycerin which relieved his chest within seconds. At the time of his original myocardial infarction, he did have a heart catheterization and a stent placed. He denies any history of stroke or congestive heart failure. He has not had a treadmill or chemical stress test since his heart attack. He states that he is extremely fatigued and has difficulty sleeping ever since the car accident and heart attack. He states that he is extremely fatigued and has difficulty sleeping ever since.

* * *

SOCIAL HISTORY:

Claimant smokes four cigarettes daily since age 15. He does not drink alcohol. He formerly worked in landscaping. He completed the 12th grade, can read and write. He is right hand dominant.

* * *

Extremities and musculoskeletal:

There are no obvious bony deformities. Range of motion of all joints checked as full. Palpitation of the lumbar spine does illicit moderate to severe discomfort. Peripheral pulses are easily palpitated and symmetrical. There is no edema. There is no evidence of varicose veins. Grip strength is unimpaired. The hands have full dexterity. Straight leg raising is negative. There is no paravertebral muscle spasm.

Claimant had no difficulty with heel and toe walking.

CONCLUSIONS:

- (1) A history of a motor vehicle accident in 2006 as well as myocardial infarction in 2009. There is persistent low back pain with palpitation on exam to day.

* * *

NOTE: The examining physician did not state that claimant was totally unable to work.

- (b) On January 10, 2009 Medical Examination Report (DHS-49) was reviewed. The family practice physician provided the following diagnoses: degenerative spine disease; diabetes, coronary artery disease (CAD).

The physician provided the following physical limitations. Claimant was able to lift less than ten pounds occasionally. He can stand/walk less than two hours in an eight-hour day. He can sit less than six hours in an eight-hour day. He is not able to do reaching or pushing or pulling with either extremity. He is able to use his upper extremities for simple grasping and fine manipulating. He is not able to operate foot/leg controls.

NOTE: The family physician did not state that claimant is totally unable to work.

- (c) A [REDACTED] History and Physical examination report was reviewed. The physician provided the following history:

History of present illness: Claimant is a pleasant 44-year-old gentleman who was sitting at home on his couch when he developed substernal chest pressure. He had associated left upper arm discomfort. He was sweating slightly. He denied any dizziness, shortness of breath or jaw discomfort. This was the third episode of similar symptoms, having had one per day for the previous two days, and he thought it best that he talk to his sister and brother. He promptly ran to the house next door. They suggested he go directly to the emergency department.

* * *

Claimant is a smoker and has vowed that he will never smoke again. He quit yesterday.

* * *

Past Surgical History:

Two previous back operations; the most recent was two weeks ago. He started taking his sister's insulin in order to get his sugars below 300. Otherwise, he would have cancelled his operation. It was done on March 9, 2009. This previous surgery was done on February 25, 2008.

* * *

The internist provided the following impression:

- (1) Non-ST-elevation myocardial infarction;
- (2) Diabetes mellitus, uncontrolled;
- (3) Cholesterol level unknown;
- (4) Hypomagnesemia.

* * *

(d) A [REDACTED] history and physical was reviewed. The physician provided the following assessment:

- (1) Non-ST-elevation myocardial infarction with concerning anterior electrocardiogram (EKG) abnormalities;
- (2) Diabetes mellitus, Type II;
- (3) Hypertension;
- (4) Strong tobacco use;
- (5) Very strong history of coronary artery disease;
- (6) Bronchospasm on examination.

* * *

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any clinical confirmations of a mental impairment. 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 testified that he has back pain, status post myocardial infarction, diabetes, and status post back surgery. A recent mental examination report (July 10, 2009) by a family physician provides the following diagnoses: low back pain, radicular symptoms into the legs, and CAD. The physician states that claimant can occasionally lift less than ten pounds. Claimant is able to walk less than two hours in an eight-hour day and able to sit less than six hours in an eight-hour day. Claimant is able to do simple grasping and fine manipulating. However, he is unable to do reaching or pushing-pulling. Also, claimant is unable to operate foot controls. The family physician, however, did not totally preclude claimant from all work activities.

(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 currently smokes three cigarettes per day, contrary to medical advice. Claimant has been a heavy smoker for more than ten years.

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 the residual functional capacity to perform unskilled light work. The department evaluated claimant's impairments using the applicable SSI Listings. Claimant does not meet any of the Listings.

The department denied claimant's request for disability benefits based on Med-Voc Rule 203.13 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 does 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 12 months and totally prevents all current 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).

Using the *de minimus* standard, 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.

However, SHRT did review claimant's eligibility using the SSI Listings. SHRT decided that claimant does not meet any of the applicable SSI 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 landscape laborer and foreman. Claimant's work as a landscape laborer was heavy work.

It is obvious from the medical records that claimant is no longer able to do the heavy work required of a landscape laborer. Claimant has had two back surgeries and has a lifting limitation of less than 12 pounds. Claimant also has chronic back pain.

The medical evidence establishes that claimant is not able to return to his previous work as a landscape laborer/foreman. Therefore, claimant meets the Step 4 eligibility 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 mental impairment.

Second, claimant alleges disability based on status post myocardial infarction, diabetes, status post back surgery and chronic pain. Claimant's recent back surgery appears to be successful even though he is precluded from repetitive heavy lifting. Although claimant does have limitations based on his back impairments, the medical evidence of record does not show that claimant is totally unable to perform sedentary work.

Third, claimant testified that the major impediment to his return to work was his chronic back pain secondary to his recent back surgery. 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 combined impairments. Claimant performs a significant number of activities of daily living, has an active social life with his children and his relatives who live near by. Claimant is able to drive an automobile approximately ten 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 theater, 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.

Finally, the Administrative Law Judge is not able to award disability benefits to claimant because he is acting against medical advice (AMA) due to continued smoking, contrary to the advice of his doctors.

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 for the disputed eligibility period (May 5, 2009 to February 26, 2010) is, hereby, **AFFIRMED**.

SO ORDERED.

/s/
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 7, 2010

Date Mailed: June 8, 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 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.

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cc:

