

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: 2010-17567

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 16, 2010

Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 March 16, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by State Disability Assistance (SDA) eligibility standards?

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 a married, 52-year-old high school graduate and skilled automotive technician (degreed) and businessman who owned and operated an automobile repair shop until 2009, per self report.

(2) Three years earlier, on March 2, 2006, claimant slipped and fell on the ice in front of a motorcycle shop and landed on his wrists; his initial x-rays were negative (Department Exhibit #1, pg 26).

(3) On March 26, 2006, bilateral upper extremity bone scans were done which confirm claimant has arthritic changes in both wrists (Client Exhibit A, pg 26).

(4) On May 3, 2006, claimant underwent a right wrist MRI scan which was essentially negative, except for a small tear in his triangular fibrocartilage with some benign subchondral cysts detected in the proximal navicular bone (Department Exhibit #1, pgs 7 and 8).

(5) In May, June and August 2006, corrective arthroscopic surgery was offered by claimant's treating orthopedic specialist, but claimant did not want it (Client Exhibit A, pgs 24 and 25).

(6) By February 2007, this orthopedist stopped recommending surgery because claimant wanted a guarantee it would get rid of all his pain (Client Exhibit A, pg 24).

(7) This specialist's notes from that appointment state in relevant part:

Nobody will guarantee him that this surgery is going to get rid all of his pain. I don't recommend it at this stage. I feel that he should just learn to live with it, accept it and see me back in six months. If there are any problems or questions, see me at any time (Client Exhibit A, pg 24).

(8) As of claimant's SDA hearing date (3/16/10), [REDACTED] and [REDACTED] were being prescribed for pain management, but claimant stated he preferred using over-the-counter [REDACTED] and [REDACTED] instead.

(9) In December 2009, after claimant finished winding down his business, he applied for a disability-based monthly cash grant (SDA).

(10) When that application was denied, claimant filed a hearing request dated January 27, 2010.

(11) Claimant's hearing was held on March 16, 2010.

(12) Claimant alleges the above-referenced upper extremity impairments, when combined with certain lumbar/cervical spine residuals secondary to a December 27, 2008 deer-car collision, render him completely unable to engage in any type of substantial gainful work activity.

(13) Claimant stands 6'2" tall and is medically obese at 305 pounds (BMI=39.2); he is right-hand dominant, per self report.

(14) Claimant has been diagnosed with high blood pressure and high cholesterol, not uncommon in medically obese patients and is currently under adequate control with prescription medications ([REDACTED] (Department Exhibit #1, pg 58).

(15) Lumbar spine x-rays taken two days after claimant's December 2008 deer-car accident verify some degenerative facet changes most pronounced at L5-S1 with marginal osteophyte formation throughout, but no evidence of acute injury and well-aligned vertebrae/well-maintained disc spaces were noted (Department Exhibit #1, pg 21).

(16) Likewise, claimant's December 2008 pelvic CT scan revealed some lower lumbar/bilateral hip degenerative changes (arthritis), but no acute injury (Client Exhibit A, pgs 22 and 23).

(17) In January 2009, claimant underwent a cervical MRI scan which detected a small cord contusion at C5, osteophyte formations from C4 through C6, mild foraminal impingement at C6-C7 and small disc herniations at multiple levels (Client Exhibit A, pgs 6 and 7).

(18) In February 2009, claimant underwent a lumbar spine MRI scan which verifies an extradural defect at T12-L1 and an L1-L2 disc herniation, but no other severe abnormalities are described and claimant's vertebral bodies are generally described as normal with good alignment; no compression deformity or significant signal abnormality is noted, however, the multiple osteophyte formations first noted by x-ray in 2008 were reconfirmed (Client Exhibit A, pgs 16 and 17)(See also Finding of Fact #15 above).

(19) An independent physical evaluation conducted on October 16, 2009, verifies mild to moderate lumbar spine, cervical spine, bilateral wrists and bilateral shoulder range-of-motion limitations, but bilateral grip strength was good (Department Exhibit #1, pgs 60-62).

(20) Per the examining doctor, claimant was able to perform adequate tandem gait without assistive device and he showed intact strength walking on heels and toes; he was alert and oriented times three without overt sad or anxious behaviors; he appeared grossly deconditioned (Department Exhibit #1, pgs 57 and 58).

(21) This examining doctor noted that, as a business owner, claimant was responsible for all administrative duties (paperwork) associated with his role and he still appeared fit for that type of work (Department Exhibit #1, pg 57).

(22) Claimant reported at hearing he needs no assistance with self cares or basic daily living activities, but he has not looked for work since he closed his business because no one will hire him in his present physical state.

(23) A July 2009 follow-up visit to claimant's treating orthopedic specialist notes:

He continues to have difficulties with his neck. Now he doesn't want to walk too much. I told him I am not going to give him disability for that as far as walking. He should get out and walk as much as he can...(Client Exhibit A, pg 2).

CONCLUSIONS OF LAW

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
- (d) A person receiving 30-day post-residential substance abuse treatment.
- (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
- (f) A person receiving special education services through the local intermediate school district.

- (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.

"Disability" is:

...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 (For SDA duration: See Sec. 604(1)(b) above.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing

is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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).

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).

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).

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 is not disqualified from SDA eligibility at Step 1 because his self-employed business owner status ended in 2009 and he has remained unemployed since then.

At Step 2, claimant's diagnosed physical impairments, in combination, have left him with some range-of-motion limitations and pain. However, it must be noted no severe mental, emotional, or cognitive impairments have been shown, and claimant's residual pain appears fully capable of adequate management with the prescription medications currently being prescribed, if claimant chooses to use them.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed physical impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, claimant's past relevant work history as a hands-on mechanic combined with his business experience consisted of a wide variety of heavy exertional job duties (as employee) and sedentary exertional job duties (as administrative manager). This Administrative Law Judge finds the medical evidence of record supports claimant's contention he can no longer return to any type of mechanic's position because that type of work consisted of excessive bending, lifting, squatting, carrying, twisting, etc., which is likely to exacerbate claimant's pain and/or cause additional injury. However, nothing in claimant's medical records supports a finding he is physically or mentally incapable of performing any number of administrative/management job

duties (sedentary work) currently existing in the national economy, which is the standard to be applied in SDA eligibility determination cases. As such, claimant's disputed application could remain denied at Step 4, based on ability to perform past work despite existing impairments. However, even an analysis of Step 5 was required, claimant would be unsuccessful in establishing SDA disability status under the governing rules.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. On April 8, 2010, the department's State Hearing Review Team (SHRT) issued a post-hearing decision after review of the medical evidence claimant submitted at hearing, most of which already was contained in the department's medical packet (Department Exhibit #1, pgs 1-102).

SHRT found claimant's vocational profile dictated a finding of not disabled in accordance with Medical Vocational Grid Rule 202.14. This Administrative Law Judge concurs with SHRT's decision; however, she applied Grid Rule 202.15, based on claimant's skilled, transferable owner-operator experience. As such, claimant's disputed application must remain denied.

Claimant's biggest barrier to employability appears to be his displacement from his longstanding business career, in combination with his lack of recent connection to the competitive workforce. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with his skills, interests and abilities.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by SDA eligibility standards, and thus, properly denied his December 23, 2009 SDA application.

Accordingly, the department's actions are AFFIRMED.

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 19, 2010

Date Mailed: May 19, 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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