

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: 2010-34421
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 5, 2010
Oakland 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 October 5, 2010, in Madison Heights. Claimant personally appeared and testified under oath.

The department was represented by David Rost (ES).

The Administrative Law Judge appeared by telephone from Lansing.

By agreement of the parties, the record closed on October 5, 2010.

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/SDA applicant (August 4, 2009) who was denied by SHRT (May 21, 2010) due to claimant's ability to perform medium work. SHRT relied on Med-Voc Rule 203.07, as a guide.

(2) Claimant's vocational factors are: age--62; education--high school diploma; post high school education--degree in industrial engineering from [REDACTED]; work experience--Six-Sigma engineer, foundry engineer--product development, casting engineer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when he worked as a Six-Sigma engineer at a foundry.

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

- (a) Legally blind in right eye;
- (b) Dysfunctional vision in his left eye;
- (c) Keratonus of both eyes;
- (d) Status post four corneal transplants;
- (e) Status post tear duct bypass; and
- (f) Glaucoma implant.

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

OBJECTIVE MEDICAL EVIDENCE (May 21, 2010)

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's eligibility using SSI Listing 2.02. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on 20 CFR 416.967(c) based on claimant's ability to perform medium work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not

wear braces. Claimant was not hospitalized overnight as an inpatient at any hospital in either 2009 or 2010.

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

(8) The following medical records are persuasive:

See the SHRT summary of claimant's medical evidence in Paragraph #5, above.

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant does not allege disability based on a mental impairment.

(10) The probative medical evidence, standing alone, does not establish an acute physical/exertional impairment expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has no vision (legally blind) in his left eye. Claimant has good functional vision in his right eye due to numerous surgeries. The medical evidence from claimant's ophthalmologist (March 15, 2010) does not state that claimant is totally unable to work due to his total lack of vision in his right eye and surgically improved vision in his left eye.

(11) Claimant has not applied for federal disability benefits (SSI) with the Social Security Administration (SSA). Claimant has applied for 75 jobs in the past six months. He is looking for work as a Six-Sigma engineer.

CONCLUSIONS OF LAW

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).

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/BEM 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 eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. PEM/BEM 260/261.

Claimants, who are working and 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, claimant meets Step 1.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Unless an impairment is expected to result in death, it must have existed, or be expected to exist, for a continuous period of at least 12 months from the date of application. 20 CFR 416.909. The durational requirement for SDA is 90 days.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit his physical or mental ability to do basic work activities, he does not meet the Step 2 criteria. 20 CFR 416.920(c). SHRT decided that claimant meets the severity and duration requirements under the *de minimus* test.

Claimant meets Step 2.

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 a Listing.

Therefore, claimant does not meet Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked was working as a Six-Sigma engineer at a foundry. This was light work.

The Medical/Vocational evidence of record shows that claimant has major vision impairment in his right eye: claimant has no vision in his right eye. However, claimant does have good functional vision in his left eye. Based on the medical evidence of record, claimant is able to return to his previous work as a Six-Sigma engineer.

Claimant thinks that he is able to return to his previous work as a Six-Sigma engineer and has recently applied for positions similar to the one that he had in 2009 at the foundry.

Claimant does not meet Step 4.

STEP #5

The issue at Step 5 is whether claimant has the residual functional capacity (RFC) to do other work. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED] [REDACTED] at 20 CFR 416.967.

The Medical/Vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work.

Claimant thinks that he is able to return to his previous job as a Six-Sigma engineer for a foundry. Recently, claimant applied for positions similar to the one that he had in 2009.

Claimant's testimony, in combination with the medical records, clearly establishes that claimant is able to work. In the past 6 months, claimant filed approximately 75 applications for employment.

The evidence of record, taken correctively clearly establishes that claimant is able to perform skilled and unskilled sedentary work (SGA).

Based on this analysis, the department correctly denied claimant's MA-P/SDA application.

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/BEM 260/261.

Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis, as described above.

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 25, 2010

Date Mailed: October 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 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:

