

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: 2010-45071
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 31, 2010
Genesee 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 31, 2010, in Flint. The claimant personally appeared and testified under oath.

The department was represented by Mary Humbarger (ES) and Lisa Gee (ES).

The Administrative Law Judge appeared by telephone.

The record closed on August 31, 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 (May 24, 2010) who was denied by SHRT (August 5, 2010) due to insufficient evidence.
- (2) Claimant's vocational factors are: age--41; education--10th grade; post high school education--none; work experience--factory work in [REDACTED] (date unknown).
- (3) Claimant's work history is unknown; his last substantial gainful activity (SGA) is unknown.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Above the knee right leg amputation; and
 - (b) Depression.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (August 5, 2010)

The claimant was able to perform normal work activities. SHRT was unable to evaluate claimant's impairments using the SSI Listings because claimant's medical evidence is inadequate.

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), laundry and grocery shopping (sometimes). Claimant ambulates with the use of crutches. Claimant does not use a walker or wheelchair. Claimant uses a shower stool 30 times a month. Claimant does not wear braces. Claimant was not hospitalized as an in-patient in 2009 or 2010.
- (7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) A May 18, 2010 Medical Examination Report (DHS-49) was reviewed. The physician provides the following diagnoses: hypertension/aka and right leg sebaceous cyst. Claimant also reports left leg knee pain on standing since 1993 (after a gunshot injury).

The physician reports claimant is able to lift less than ten pounds occasionally. He is able to stand/walk less than two hours in an eight-hour day. He is able to perform simple grasping, reaching, pushing-pulling and fine manipulating. He is able to use his left leg to operate foot and leg controls for a limited period.

The physician reports that claimant has no mental limitations.

NOTE: The physician did not prohibit all work activities due to claimant's right leg amputation and his left leg pain. Also, the consulting internist did not prohibit all work activities due to claimant's mental status.

(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. The consulting internist did not report any mental impairments during claimant's May 18, 2010 exam.

(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 a right above the knee amputation and experiences pain in his left leg after a period of continuous standing. The consulting internist did not report that claimant was totally unable to perform work activities. She did report that claimant is able to lift less than ten pounds frequently, stand and/or walk less than two hours in an eight-hour day. Claimant has normal use of both hands and arms and limited use of his left leg for operating foot controls.

(11) Claimant thinks he is eligible for MA-P/SDA because of his right leg amputation and his depression.

(12) Claimant recently applied for disability benefits with the Social Security Administration (SSA). SSA recently denied his claim. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA due to his right leg above the knee amputation and his depression.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity (RFC) to perform normal work activities. The department was unable to evaluate claimant's impairments due to insufficient medical evidence.

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).

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 the Step 1 eligibility test.

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. PAM/PEM 261.

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 claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets Step 2.

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 a Listing.

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's only work experience is assembly line work at an auto plant. The date of his employment is unknown.

The medical/vocational evidence of record shows that claimant is unable to perform assembly line work because he cannot stand without the assistance of a crutch.

Claimant meets 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. Notwithstanding claimant's above the knee amputation and his depression, claimant is able to perform simple unskilled work. Simple unskilled work includes working as a ticket taker for a theater, as a parking lot attendant, or as a greeter for [REDACTED]

During the hearing, the claimant testified that a major impediment to his return to work was his left leg 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 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 pain and above the knee right leg amputation. Claimant currently performs several activities of daily living, has an active social life with his sister and his minor daughter. The collective evidence shows that claimant is able to perform 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: September 23, 2010

Date Mailed: September 24, 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:

