

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-6116
Issue No: 2009; 4031
Case No: [REDACTED]

Hearing Date:
February 2, 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 February 2, 2010, in Flint, Pierson Road. The claimant personally appeared and testified under oath.

The department was represented by Connett Stackner (ES).

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) Claimant is an MA-P/SDA applicant (May 30, 2009) who was denied by SHRT (November 17, 2009) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.
- (2) Claimant's vocational factors are: age--40; education—11th grade; post high school education--GED; work experience—rough carpenter, factory laborer and stocker at [REDACTED].
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he worked as a rough carpenter.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Lower back dysfunction; and
 - (b) Lower back pain.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (November 17, 2009)

MEDICAL SUMMARY:

In 7/2009, claimant reported a history of substance abuse. He tried to minimize his drug and alcohol use. He appeared unkempt. He gave vague responses. He denied hallucinations or any other thought disorder. His affect was restricted and his mood was depressed (Exhibit #23, page 23). Diagnoses included major depressive disorder, alcohol dependency, and cocaine abuse. (Exhibit #25, page 25.)

Claimant has a history of lumbar laminectomy with discectomy in 3/2009. An EMG in 7/2008 showed evidence of L5-S1 Medical Packet. In 9/2009, claimant's grip strength was weak for an adult man, in both hands. He was able to lift coins with both hands. He had decreased range of motion of the lumbar spine. Patellar and Achilles reflexes were +1 and symmetrical. Extensor strength was diminished on the left. Neurovascular status in the feet was satisfactory. His gait was satisfactory, although he flexes slightly at the waist (about 10 degrees). Tandem gait was good. He was able to use his hands for fine and gross dexterity.

ANALYSIS:

The claimant has a history of substance abuse. His diagnoses included alcohol dependency and cocaine abuse. He was depressed but there was no evidence of a thought disorder. The claimant underwent a lumbar laminectomy in 3/2009. In 9/2009, he had weak grip strength but no loss of fine or gross dexterity. He is able to walk without assistance but did flex slightly at the waist when he walked.

* * *

- (6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, and grocery shopping (sometimes). Claimant uses a cane approximately 30 times a month. He does not use a walker, wheelchair, or shower stool. Claimant wears a back brace approximately 25 times a month. Claimant was hospitalized once as an inpatient in 2009 for back surgery.
- (7) Claimant does not have a valid driver's license and does not drive. Claimant is computer literate.
- (8) The following medical records are persuasive:
 - (a) A [REDACTED] consultative orthopedic exam was reviewed.

The orthopedic physician provided the following history:

Claimant complains of low back pain since May 2008. He relates that he was watching a basketball game on TV. He had left-sided numbness from his arm to his leg. He went to [REDACTED]. An EKG was performed and he was released later that day. When he woke up the next morning, he states that part of his left foot was numb. He had back pain and, ultimately, he had surgery performed on [REDACTED] by [REDACTED]. This was a lumbar fusion with laminectomy at L5-S1. Since surgery, he has less pain and less numbness. However, he continues to be symptomatic. He continues to have discomfort in his back. He is being treated with Neurontin and Flexeril. He treats with [REDACTED] and he is currently in physical therapy. He is also scheduled for another

MRI to rule out additional discs or instability. His low back pain is worse on the left than on the right. Coughing does bother his back. There is no relation of his symptoms to sneezing or going to the bathroom. The symptoms are relieved by lying on his abdomen with a pillow under his waist. Back pain is aggravated by standing. When asked what he was unable to do, he said yard work, housework, or push a lawnmower. He last worked in 2007, when the company he was at closed.

The orthopedic internist provided the following diagnosis: status following lumbar laminectomy with continued low back pain and radiation to his left leg and slight flexion and deformity of his back.

The orthopedic internist provided the following conclusion:

Regarding work, claimant is able to use his hands for fine or gross dexterity. He can sit and stand for short periods of time because of ongoing low back pain and pathology. He does have decreased motion. He is unable to sit, stand, or be on his feet for prolonged periods.

NOTE: The consulting orthopedic internist did not state the claimant is totally unable to work.

- (9) Claimant does not allege a severe mental impairment as the basis for his disability. There are no probative psychiatric reports in the record. 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, or combination of impairments expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do establish that claimant had a laminectomy (L5-S1) in March 2009. He continues to have some pain secondary to the laminectomy. He also has decreased range of motion of the lumbar spine and some numbness in his feet. At this time, however, there is no probative medical evidence to establish a severe disabling physical condition that totally precludes all sedentary work activities.

- (11) Claimant recently applied for federal disability benefits (RSDI/SSI) with the Social Security Administration. His application was denied. He has filed timely appeal.

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).

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically

acceptable clinical and laboratory diagnostic techniques....
20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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. 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. 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 Step 1.

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/or 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 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.

However, SHRT evaluated 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 Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked as a rough carpenter. This is light work. It also requires claimant to work in high places and climb ladders.

Because of claimant's loss of grip strength in both hands and his instability when walking, claimant is not able to return to his prior work as a rough carpenter because he is unable to grasp the tools required and unable to climb ladders and work in high places.

Therefore, claimant meets Step 4.

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/physical 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 a mental impairment.

Second, claimant alleges disability based on his inability to sit or stand for long periods, decreased range of motion of the lumbar spine and his pattern of slightly flexing his torso at the waist for about ten degrees when he walks. Notwithstanding claimant's low back pain and numbness in his left foot, the medical evidence of record does not substantiate that claimant's current physical impairments totally preclude all work activity. The consulting physicians (osteopathic internists) who provided reports on claimant's physical condition did not state that he was totally unable to work.

Third, claimant alleges disability due to his low back pain and bilateral numbness in his feet. Secondary to his 2009 laminectomy. 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/numbness 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 combination of impairments. Currently, claimant performs several activities of daily living and provides custodial care for his five-year-old son. Claimant goes visiting two to three times a month and has visitors at his house about eight times a month. Claimant attends church regularly approximately four 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 unskilled sedentary work (SGA). In this capacity, claimant is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. These work activities would provide claimant with a sit/stand option.

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Also, it is significant that there is no "off work" order from claimant's primary care physician in the record.

The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it denied claimant's MA-P/SDA application. Furthermore, claimant did not meet his burden of proof to show the department's denial of his application was reversible error.

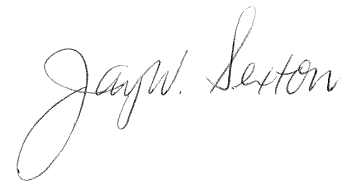
Accordingly, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential evaluation.

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 BEM 260/261.

Therefore, the department's denial of claimant's MA-P/SDA is, hereby, AFFIRMED.

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: September 6, 2011

Date Mailed: September 6, 2011

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:

