

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: 2010-39582
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 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 July 22, 2010, in Flint. Claimant personally appeared and testified under oath.

The department was represented by Dawn Elford (ES).

By agreement of the parties, the record closed on July 22, 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 (January 28, 2010) who was denied by SHRT (June 30, 2010) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.22, as a guide.

(2) Claimant's vocational factors are: age--44; education--high school diploma; post high school education--on the job training as a ceramic tile installer; work experience--tile installer for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a ceramic tile installer for [REDACTED] in 2008.

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

- (a) Status post back surgery;
- (b) Has steel rods in his back;
- (c) Sleep dysfunction;
- (d) Side effects from medication;
- (e) Hypertension;
- (f) Unable to sit for long periods; and
- (g) Chronic stress;

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

OBJECTIVE MEDICAL EVIDENCE (June 30, 2010)

SHRT decided claimant was able to perform light work. SHRT evaluated claimant's eligibility using SSI Listing 1.01. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on 20 CFR 416.967(b) due to claimant's ability to perform unskilled light work.

(6) Claimant lives with his girlfriend and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking (sometimes), dishwashing (sometimes), light cleaning (sometimes), and grocery shopping (sometimes). Claimant uses a cane approximately 30 times a month. Claimant does not use a walker, wheelchair, or shower stool.

Claimant wears a back brace approximately twice a month. Claimant was not hospitalized overnight as an inpatient in 2009 or 2010.

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

(8) The following medical records are persuasive:

(a) A [REDACTED] internal medical exam was evaluated.

Chief complaints: back and right shoulder pain and leg atrophy.

Claimant has a history of lower back pain having worked doing ceramic tile, but he states that he did sustain a Jet Ski accident in 1998. He states he has undergone a laminectomy in 2007 by [REDACTED] and then underwent an L5-S1 fusion in 2008. He is not undergoing any therapy other than range of motion exercises as well as ice and heat therapy at home. He is taking pain medications.

Claimant also relates history of sustaining a lifting injury to his shoulder in 1996 while at work rolling carpet. He states that he has had three surgical interventions to his right shoulder and his last surgery was performed in 2000 at [REDACTED].

Claimant states he has not worked since August 2008. He used to install ceramic tile and stopped because of his low back pain. He now lives with his girlfriend in a house. He is able to do activities of daily living, but requires help putting on socks and shoes. He does not have any bath bars or shower stool at home. He is able to drive on occasion. He is able to cook, but does not do any household chores. He used to enjoy bike riding, golf and camping and now he mostly does puzzles and watches television. He states he can sit for about sixty minutes, can stand if he is able to adjust his weight and can walk for half a mile. He can climb a flight of stairs. He can lift about ten pounds.

Claimant is a smoker.

The consulting internist provided the following conclusions:

(1) Lower back pain;

He has undergone a lumbar spine fusion and did have diminished sensation in the left leg. He did have myelopathy with associated cramping in the left calf and atrophy of the left calf. He did have difficulty doing orthopedic maneuvers. He does compensate with a mild left sided limp and a cane would be helpful for pain control when walking more than 100 yards. At this point, he may require further operative intervention down the road. His long-term prognosis appears guarded. Per review the chart, he has had multilevel facet arthropathy and osteophyte complexes which would coincide with his neuropathy today.

(2) Right shoulder:

This appears to be stable. He has undergone operative intervention and appears to have had good results.

* * *

(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 alleges disability based on a high level of stress in his life. However, there is no clinical evidence in the record to establish that claimant's chronic stress totally precludes all work activity.

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. A recent consultative examination by an internist provided the following diagnoses: lower back pain, myelopathy with associated cramping in the left calf and atrophy of the left calf. The internist reports claimant had difficulty doing

orthopedic maneuvers. The internist reported the following diagnoses: Multilevel facet arthropathy and osteophyte complexes along with neuropathy.

(11) Claimant thinks he is eligible for MA-P/SDA because it is very difficult for him to perform work-related activities for significant periods of time, without frequent breaks.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant is a 44-year-old male who has a high school diploma and a work history of ceramic tile installing. Claimant thinks he is totally unable to work because he has chronic pain and experiences sleep dysfunction and an inability to perform activities on a continuous basis due to the side effects of his pain medications.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled light work. The department thinks claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

Based on claimant's vocational profile (young individual [44] has a 12th grade education and a history of semi-skilled work as a ceramic tile installer), the department denied MA-P based on Med-Voc Rule 202.22 as a guide. The department denied SDA because the nature and severity of claimant's impairments do not preclude all work activity for at least 90 days.

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 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 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 and duration. Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months from the date of application. 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).

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 eligibility criteria. 20 CFR 416.920(c). SHRT found that claimant does not meet the severity and duration requirements.

Therefore, claimant does not meet the Step 2 eligibility test.

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 the Listings.

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 previous work, which he performed for approximately 12 years was installing ceramic tile. This may be defined as medium work.

The medical/vocational evidence of record shows that claimant has a reduced ability to lift and also reduced ability to stand and walk. In addition, claimant's daily component of pain medications prevents him from concentrating on the close tolerances required for persons installing ceramic tile. Based on the medical evidence of record, claimant is not able to return to his previous work as a ceramic tile installer.

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. The 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, at least from a physical standpoint. However, due to the side effects claimant experiences as a result of his pain medications, he experiences memory dysfunction and reduced ability to concentrate. This is primarily related to the significant number of pain medications which claimant takes on a daily basis. Notwithstanding claimant's physical limitations, claimant is able to do simple unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant, or as a greeter for [REDACTED]. In addition, it is

significant that claimant has good computer skills. This would enable him to perform sedentary work in the comfort of his home.

During the hearing, claimant testified that a major impediment to his return to work was his back, neck and leg pain. 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. Although claimant's pain medications do not totally eliminate his pain, they do provide some relief.

It should be remembered that even though claimant has several significant physical impairments, he does retain significant residual work abilities. Claimant does do activities around the home; he enjoys doing puzzles and watching TV. Claimant is able to drive an automobile, on a limited basis.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his back pain secondary to his spinal dysfunction. Furthermore, although claimant does suffer from confusion secondary to his pain medications, he would be able to do simple data input functions at home on his computer. Claimant has an active social life with his girlfriend.

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 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 is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: August 11, 2010

Date Mailed: August 11, 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:

