

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: 2010-41715  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 3, 2010  
Mecosta 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 3, 2010, in Big Rapids. Claimant personally appeared and testified under oath.

The department was represented by Pam Lewis (FIM) and Theresa Ruiz (ES).

By agreement of the parties, the record closed August 3, 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 (April 30, 2010) who was denied by SHRT (July 13, 2010) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.21 as a guide.

(2) Claimant's vocational factors are: age--41; education--high school diploma; post high school education--completed truck driver's school in 2009, [REDACTED]-licensed automobile mechanic 1987-1991; work experience--long-haul semi driver and forklift driver.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a long-haul semi driver in 2010.

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

- (a) Spinal surgery recommended;
- (b) Right arm dysfunction;
- (c) Chronic back pain; and
- (d) Obesity (330 pounds).

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

**OBJECTIVE MEDICAL EVIDENCE (July 13, 2010)**

SHRT decided that claimant was able to perform light work. SHRT evaluated claimant's impairments 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 light work.

\* \* \*

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, vacuuming, laundry (needs help) 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 in-patient in 2009 or 2010.

(7) Claimant has a valid CDL (Chauffer's) license and drives an automobile approximately six times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A May 25, 2010 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses:

Degenerative joint disease of the cervical spine, fracture of lower leg (fibula).

The physician reports the following physical limitations:

Claimant is able to lift less than ten pounds when occasionally. He is able to stand/walk less than two hours in an eight-hour day. It is recommended that he use a crutch. Claimant is able to use his left hand for simple grasping, reaching, pushing-pulling and fine manipulating. Claimant is able to use his left leg to operate foot controls. Claimant has no mental limitations.

NOTE: The DHS-49 physician does not state that claimant's impairments totally prevent claimant from all work activities.

(b) An April 28, 2010 neurosurgery report was reviewed. The neurosurgeon provided the following background:

Today I saw claimant in my office in consultation at your request. He is a 41-year-old gentleman who presents with a history of neck pain and pain radiating down his right arm. He states that he feels like his muscles in his shoulder and arm are twisting in knots. If he holds his head turned to the right with his neck side bent right, the pain is decreased. The pain can be exacerbated by turning his head to the left.

The pain started when he was driving a semi-truck on 2/24/2010. The right arm pain radiates from his shoulder to his elbow region, previously it was radiating to the wrist.

There is associated numbness and tingling on the right. He has no left arm pain. He has no left arm numbness or tingling. He reports a history of decreased grip and dropping objects on the right.

He says that he tried a nerve pill, he is not sure what the name of it was, but this caused headache and he was seen in the emergency department and this pill was stopped. He has tried Vicodin and Medrol Dose Pak, which helped some. He likes to ride his motorcycle, which he has not been able to do since this problem.

**HISTORY:**

Migraine headaches and arthritis. L4-5 microdiscectomy on the right and bilateral cyst removed on the tailbone.

**SOCIAL HISTORY:**

Claimant is single and lives alone. He denies tobacco or alcohol use. He works at [REDACTED] as a truck driver, but he has been off work since [REDACTED].

**PHYSICAL EXAM:**

Height 5'8" tall, weight 322 pounds. Fundoscopic exam, no papilledema and no hemorrhages. Cranial nerves two: visual fields seem to be within normal limits. Three, four and six: pupils are equal and reactive to light. Extraocular movements are within normal limits. Five: facial sensation and masseters are within normal limits. Seven: no facial paresis. Eight: hearing, voice and finger rub within normal limits. Nine: good phonation and palate arch as well. Eleven: trapezius and shoulder shrug within normal limits. Twelve: tongue protrudes in midline.

The upper extremity strength is 5/5 on the left; on the right it was 5/5 throughout except for grip, which is possibly 4+/5. The lower extremity strength is 5/5 throughout.

\* \* \*

**ASSESSMENT:** Herniated discs, C5-6 and C6-7 with radiculopathy and C5-6 cord compression.

**NOTE:** The neurosurgeon does not state that claimant is totally unable to work due to his physical impairments.

\* \* \*

(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 claimant does not allege a mental impairment as the basis of his disability.

(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 had an L4-5 microdiscectomy on the right. His current diagnosis is herniated discs C5-6 and C6-7 with radiculopathy and C5-6 cord compression. The neurosurgeon did not state that claimant's impairments were severe and did not state that claimant's impairments totally preclude all work activity.

(11) Claimant thinks he is eligible for MA-P/SDA due to his cervical spine dysfunction and chronic pain.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration (SSA). Claimant's SSA claim is currently pending.

## CONCLUSIONS OF LAW

### **CLAIMANT'S POSITION**

Claimant thinks he is entitled to MA-P/SDA benefits due to his cervical spine dysfunction.

### **DEPARTMENT'S POSITION**

The department thinks that claimant has the residual functional capacity to perform unskilled light work. The department denied claimant's application based on 20 CFR 416.967(b) due to claimant's ability to perform light work.

## 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, pages 8 and 9.

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. PEM/BEM 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 found that claimant meets the severity and duration requirements using the *de minimus* test.

Therefore, claimant meets the Step 2 eligibility test.

### **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 the Step 3 eligibility test.

**STEP #4**

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a long-haul truck driver. This was medium work.

The medical/vocational evidence of record shows that claimant has a severely reduced ability to lift (unable to lift more than ten pounds) and to stand/walk (unable to stand/walk more than two hours). Also, claimant does not have full use of his right hand. Given claimant's significant lifting and standing limitations, he is unable to return to his previous job as a long-haul truck driver.

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. 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] 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's ability to do simple unskilled work enables him to work as a ticket taker at a theater, as a parking lot attendant, and as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to his return to work was his cervical/spinal 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. 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 have residual work capabilities. Claimant is able to dress himself, bathe himself, cook (sometimes), wash dishes, do light cleaning and vacuuming, complete his laundry (with help) and go grocery shopping. In addition, claimant drives an automobile six times a month.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his cervical neck pain, secondary to his cervical/spinal dysfunction. As previously noted, claimant has the ability to perform many activities of daily living (ADLs) and operate a motor vehicle on a regular basis. This means 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: August 23, 2010

Date Mailed: August 23, 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

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