

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: 2010-4208
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 25, 2009
St. Clair 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 November 25, 2009, in Port Huron. Claimant was represented by [REDACTED]

The department was represented by Leonard Garza (FIM).

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)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?

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/retro/SDA applicant (February 27, 2009) who was denied by SHRT November 2, 2009) based on claimant's ability to perform unskilled light work. 20 CFR 416.967(b). SHRT relied on Med-Voc Rule 202.20, as a guide. Claimant requests retro MA for November, December 2008 and January 2009. The disputed eligibility period is February 27, 2009 to November 25, 2009.

(2) Claimant's vocational factors are: age--45; education--high school diploma; post high school education--a six-month course in mechanics/certified licensed as an auto/brake mechanic by the State of Michigan in 1987; work experience--maintenance worker/floor sweeper at [REDACTED], service manager at [REDACTED] supervisor at a tire store, hi-lo repairman.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2009 when he was a maintenance worker (independent contractor) at a [REDACTED] [REDACTED]

- (4) Claimant has the following unable-to-work complaints:
- (a) Limited ability to use hands and feet;
 - (b) Blurred vision;
 - (c) Hypertension;
 - (d) Status post stroke (February 2009); and
 - (e) Diabetes.

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

OBJECTIVE MEDICAL EVIDENCE (November 2, 2009)

The department thinks that claimant's combined impairments do not prevent him from performing unskilled light work based on Med-Voc Rule 202.20, as a guide.

The department reviewed claimant's impairments using SSI Listings 4.01, 9.01 and 11.01.

The department decided that claimant does not meet any of the relevant SSI Listings.

* * *

(6) Claimant lives with his wife and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, vacuuming, and grocery shopping (needs help). Claimant uses a cane approximately three times a month. He uses a shower stool approximately six times a month. Claimant does not wear braces. Claimant received inpatient hospital care in 2008 for hypertension; he received inpatient hospital care in 2009 for treatment of brain trauma, stroke and diabetes.

(7) Claimant relinquished his driver's license in February 2009 due to his seizure. Claimant does not currently drive an automobile. Claimant is computer literate.

- (8) The following medical reports are persuasive:

- (a) A [REDACTED] physical examination report was reviewed.

The consulting internist provided the following chief complaints: stroke, diabetes, right knee.

The internist provided the following background:

Claimant has a history of non-insulin requiring diabetes. He is on Glucophage and Glyburide. He states his sugars run between 80 and 140. He has had multiple hospitalizations for ketoacidosis over the past four years.

He denies any retinopathy, PAD or neuropathy. He does complain of neuropathy in his feet and is on Neurontin.

Claimant sustained a cerebrovascular accident in February of 2009. At that time, he was driving when he was involved in a motor vehicle accident and subsequently developed left-sided weakness. He was diagnosed with hemorrhagic stroke at that time. He was hospitalized about four days and did undergo subsequent physical therapy. He has since stopped because of lack of money. He tries to do some range of motion exercises at home. He also tries to walk and does use a cane for long distances.

The claimant has not worked since February of 2009. He used to be a contractor for DTE and stopped because of his stroke. He now lives with his wife in an apartment. He can do his activities of daily living, but does have a shower stool. He microwaves his food. He does not drive. He recently started vacuuming, carrying groceries and taking out the trash. He used to enjoy building models but still plays on the computer and watches television. He can walk about a 1,000 feet. He can stand about 30 minutes. He denies any problems sitting. He states he can lift about five pounds.

* * *

The consulting internist provided the following conclusions:

- (1) Cerebrovascular accident: this involves predominantly his left side. He did have hypertonicity on this side with some diminished range of motion. His reflexes were diminished bilaterally. He also had sensory loss in both feet with diminished proprioception, which I think was more due to peripheral neuropathy. At this point, he is not undergoing any active treatment. Aspirin therapy would be of benefit, although he claims it was a hemorrhagic stroke. His blood pressure continues to be moderately elevated.
- (2) Diabetes: The claimant's clinical findings are as described above, in addition to his peripheral neuropathy. His sugars appear to be optimally managed at present. Compliance does appear to be an issue.

Please note he does have a history of right knee arthroplasty. This appeared to be stable and noncontributory. He would benefit from the use of his cane for navigation in tight spaces, in poorly lit areas, or on uneven ground for balance control.

* * *

(9) Claimant does not allege a mental impairment as a basis for his disability application. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity. Claimant alleges disability based on a combination of physical impairments: Limited ability to use his hands, blurred vision, hypertension and status post stroke.

(10) The probative medical evidence in the record at this time does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The consultative examination report obtained by [REDACTED] does not state that claimant is totally unable to work. The physician does note that claimant has some range of motion on his left side and that he had diminished reflexes, bilaterally. Claimant also had a sensory loss in both feet with diminished proprioception due to peripheral neuropathy. However, the [REDACTED] internist did not state that claimant was totally unable to work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Claimant's application is pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA benefits based on the impairments listed in Paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity (RFC) to perform a wide range of light work. The department denied disability benefits based on Med-Voc Rule 202.20 as a guide.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

A statement by a medical source (MSO) that an individual is “disabled,” or “unable to work,” does not mean that disability exists for the purposes of the MA-P/SDA programs.

20 CFR 416.927(e).

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 disabled for MA-P/SDA purposes. Claimant is not working. Therefore, claimant meets the Step 1 disability test.

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 at least 12 months and totally prevents all basic 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). Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability 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 the Listings.

Therefore, claimant does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a maintenance person and floor cleaner at [REDACTED]. Claimant's work at the power plant was light work. The medical evidence of record establishes that claimant can lift about five pounds and can walk about a 1,000 feet. He can stand about 30 minutes.

The physical limitations reported in the medical evidence establish that claimant is unable to return to his previous work as a janitor for a [REDACTED].

Since claimant is no longer able to work at his former job as a maintenance man and floor cleaner, he meets the Step 4 disability test.

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 a preponderance of the medical 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 a combination of physical impairments: Limited ability to use his hands/feet, blurred vision, hypertension, status post stroke and diabetes. Although claimant is precluded from heavy lifting and constant standing, the medical evidence of record does not show that claimant is totally unable to perform sedentary work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combined impairments. Claimant performs a significant number of activities of daily living and has a social life with his wife and is computer literate.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled sedentary work (SGA). In this capacity, he is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would afford claimant a sit-stand option at the work place.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under Step 5 of the sequential analysis, as presented above.

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.

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: May 17, 2010

Date Mailed: May 18, 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:

