

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: 2010-42672
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 17, 2010
Saginaw 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 17, 2010, in Saginaw. Claimant personally appeared and testified under oath.

The department was represented by Cheryl Latinen (ES).

The Administrative Law Judge appeared by telephone from Lansing.

By agreement of the parties, the record closed on August 17, 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 (March 24, 2010) who was denied by SHRT (July 20, 2010) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28, as a guide.

(2) Claimant's vocational factors are: age--46; education--11th grade; post high school education--none; work experience--line worker in a semi conductor plant, forklift operator.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since March 2008 when he was a line worker at a semi conductor factory.

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

- (a) Side effects from medications;
- (b) Degenerative disc disease;
- (c) Chronic pain;
- (d) Right hand dysfunction;
- (e) Chronic neck pain; and
- (f) Numbness in legs and hips.

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

OBJECTIVE MEDICAL EVIDENCE (7/20/2010)

MEDICAL SUMMARY

X-rays of the lumbosacral spine dated 8/09 showed modest degenerative spondylosis, osteophyte lipping at L3-4 and very slightly at L4-5 (page 31)

On examination in 8/09, claimant's muscle tone was 5+/5+. He had normal movements and equal grips. His gait was stable and strength was intact. Straight leg raise was negative bilaterally. He was tender to palpitation midline at L3-S1. Deep tendon reflexes were normal. (Page 28.)

ANALYSIS

Claimant has some degenerative changes in the lumbosacral spine. Straight leg raise was negative and gait was stable. There was no evidence of significant neurological abnormalities.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, light cleaning, laundry and grocery shopping. Claimant uses a cane approximately 15 times a month. He wears a hand brace approximately twice a month. Claimant was not hospitalized in 2009 or 2010.

(7) Claimant has a valid driver's license and drives an automobile approximately 20 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

The medical evidence is accurately summarized by the State Hearing Review Team Decision in Paragraph #5, above.

(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 does not allege disability based on a mental impairment.

(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 the following diagnoses: modest degenerative spondylosis, osteophyte lipping at L3-4 and very slightly at L4-5. The physician who performed the disability examination did not state that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration (SSA). The Social Security impairments alleged by claimant as the basis for his SSI claim is the same as those raised here. Social Security denied claimant's SSI claim. Claimant filed a 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).

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.

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 Step 1.

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.

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

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.

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 an assembly line worker for a semi conductor factory. This would require claimant to stand for his entire eight-hour shift. Claimant's work is defined as light work.

The Medical/Vocational evidence of record shows the following diagnoses: Modest degenerative spondylosis, osteophyte lipping at L3-4 and very slightly at L4-5. Based on the medical evidence of record, claimant is not able to stand continuously for an eight-hour shift.

Since claimant is unable to do the standing required at his previous work, 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. This would include working as a ticket taker for a theater, as a parking lot attendant, as a janitor or as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to his return to work was chronic neck and back pain secondary to degenerative spondylosis of the spine. 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 demonstrable residual work capabilities. Claimant is able to perform a significant number of activities of daily living, has regular interactions with his step kids and drives an automobile approximately 20 times a month. In addition, claimant is computer literate.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his spinal dysfunction and chronic pain.

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: October 22, 2010

Date Mailed: October 22, 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:

