

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: 2010-44123
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 26, 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 August 26, 2010, in Flint (McCree). The claimant personally appeared and testified under oath.

The department was represented by Vicki Greene (ES).

By agreement of the parties, the record closed August 26, 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/retro/SDA applicant (January 12, 2010) who was denied by SHRT (July 29, 2010) due to claimant's ability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requested retro MA for October, November and December 2009.

(2) Claimant's vocational factors are: age--24; education--high school diploma; post high school education--none; work experience--worked two days as a line worker at an auto parts factory in 2007.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a line worker at an auto parts factory.

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

- (a) Forgetful;
- (b) Heart dysfunction;
- (c) Right knee problems;
- (d) Heart condition; and
- (e) Learning disabled.

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

OBJECTIVE MEDICAL EVIDENCE (July 29, 2010)

SHRT decided that claimant was able to perform light unskilled work. SHRT evaluated claimant's impairments using SSI Listings 1.01, 4.01 and 12.01. SHRT decided claimant does not meet any of the applicable listings. SHRT denied disability based on Vocational Rule 202.20 and 20 CFR 416.967(b).

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery

shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces. Claimant was hospitalized overnight as an in-patient at [REDACTED] in [REDACTED] to receive treatment for a heart condition.

(7) Claimant has a valid driver's license and drives an automobile about once a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] consultative internal medicine exam was reviewed.

The physician provided the following history:

Claimant tells me he is 24 years old and right hand dominant. He said he used to be sore in both knees, but that now just the right one hurts. He indicates by touching the area that the pain is parapatellar. He said his family doctor x-rayed the knees and all he told him was that there was 'something tender in there.' He denies being referred to an orthopedic surgeon. He also denies any serious athletic injuries. He said that a maternal uncle and cousin, 'the tall ones,' have knee pain, and his uncle had some sort of surgery, in which, as the examinee puts it, 'something was replaced.'

PAST MEDICAL HISTORY:

This claimant has an irregularity of rate of his heart and he tells me that he takes Coumadin or Warfarin and Metoprolol Titrated.

ACTIVITIES OF DAILY LIVING:

Claimant tells me he knows how to drive and does so. He said that he is independent, also, in feeding, bathing, and dressing himself, but admits to some limitations in various positions. For example, he said he can stand for up to one hour, but then develops sharp pain anteriorly at the right knee. Sitting, he said, hurts if the right knee is bent. He showed me the typical partially flexed position of persons with sore knees of approximately 25-30 degrees flexion. He also said that he can walk for a mile and back. He

denies the use of any braces and gives no good history of swelling or color changes, or any use of any handheld walking aids. He has had people ask him why he is limping, although he does not obviously do so. I asked if either knee has ever buckled with him, and he said the right knee had 'a couple of times.' He almost fell, but caught himself each time.

PHYSICAL EXAMINATION:

Claimant is a well-developed and moderately obese gentleman, whose height is 6'6" tall and weighs 374 pounds.

* * *

Inspection of this man's knees showed them to have normal color and temperature. There was no significant tenderness with light palpation or light percussion. No effusion could be demonstrated in either knee joint. Overall, alignment is reasonably good for both lower extremities. He does have two-inch bicondylar distance when standing with feet together, but his is mild bowing. As he sat on the side of the examining table and alternately flexed and extended the knees, soft crepitus was palpable, bilaterally. Tracking of the patellae appeared to be from inferolateral to anteromedial or valgoid patellar tracking, especially so on the right.

* * *

(b) A [REDACTED] medical report was reviewed.

The Ph.D. psychologist provided the following information:

HISTORY OF ILLNESS:

Claimant is a 24-year-old male who drove to the appointment and arrived punctually. Claimant provided the information for this assessment. Claimant provided a State of Michigan driver's license.

* * *

COMPLAINTS AND SYMPTOMS:

Claimant alleged impairments were reported as follows:

‘Learning disability, knee problems, and heart situation.’ He was reportedly previously diagnosed with ADHD. He agreed that he has difficulty with concentration. He said his past hyperactivity has calmed down. He said he always had learning problems and was in Special Education in school.

* * *

PERSONAL HISTORY:

Claimant denied any history of physical or sexual abuse as a child. Claimant graduated from high school. Claimant reported having been in Special Education beginning in elementary school for learning problems. The Special Education classification was believed to be LD. Claimant is single and has no children.

* * *

Claimant most recently worked in a factory in 20907 handling parts for 2 days until he quit because, ‘he couldn’t take the heat in the building.’ Claimant denied any other history of employment.

* * *

SOCIAL FUNCTIONING:

Claimant reported generally getting along OK with others. Claimant spends time with friends and family members. In school, Terrance’s interactions with other students were satisfactory. Claimant was socially appropriate and pleasant during this exam. Claimant’s eye contact was appropriate.

ACTIVITIES:

Claimant currently resides with his mother. Claimant generally spends the days as follows: ‘watch TV and play the game. I use my drum set.’ Claimant is able to do cooking, cleaning and laundry. Claimant is independent in self-care and personal hygiene. Claimant reported being

able to grocery shop independently. Claimant is able to pay bills and count money. Claimant denied any current income. Claimant is able to drive a car and has a license.

* * *

DSM DIAGNOSIS:

Axis I--ADHD, Inattentive Type; Reading Disorder.

Axis V--GAF--60.

ADDITIONAL INFORMATION:

It is my impression that claimant's mental abilities to understand, attend to, remember, and carry out instructions are moderately impaired. Claimant's abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace are mildly impaired.

Overall, based on today's exam and all the information available to me at this time, it is my impression that claimant's psychological condition would moderately impair his ability to perform work-related activities.

* * *

(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 clinical evidence provided by the [REDACTED] psychologist shows the following diagnoses: ADHD, inattentive type; reading disorder. Claimant has a GAF score of 60. The Ph.D. psychologist did not state that claimant is totally unable to work.

(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 does have a two-inch bicondylar distance when standing. Also, when flexing and extending his knees, soft crepitus was palpable,

bilaterally. The internist did not state that claimant was totally unable to work due to a physical impairment.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA based on his forgetfulness and a heart problem.

DEPARTMENT'S POSITION

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

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 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 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 (for two days) as a line worker at an auto parts factory. This was medium work.

The Medical/Vocational evidence shows that claimant has a moderately reduced ability to concentrate. This would make it difficult for a claimant to work at an assembly line where he is required to make adjustments to the parts that are coming to his station quickly without consulting his supervisor or fellow employees. Based on the medical evidence of record, claimant has difficulty focusing and would not be able to return to his previous work as a parts handler at an automobile factory.

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]. [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. Notwithstanding claimant's mental limitations (problems with focusing on the job at hand), claimant is able to perform 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 short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his heart dysfunction and limited ability to focus. It should be noted that claimant currently performs many activities of daily living and has an active social life with his relatives. Claimant also drives an automobile occasionally. The collective evidence in the record shows that claimant is able to perform simple unskilled sedentary work (SGA). Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on the sequential analysis as stated 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/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: September 9, 2010

Date Mailed: September 10, 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:

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