

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: 2010-51608
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 30, 2010
Wexford 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 September 30, 2010, in Cadillac. The claimant personally appeared and testified under oath.

The department was represented by Joan McFarling (ES).

By agreement of the parties, the record closed on September 30, 2010.

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 (December 23, 2009) who was denied by SHRT (September 8, 2010) due to claimant's ability to perform unskilled sedentary work. SHRT relied on Med-Voc Rule 201.21, as a guide. Claimant requested retro MA for September, October and November 2009.

(2) Claimant's vocational factors are: age--49; education--high school diploma; post high school education--attended [REDACTED] for eight semesters, majoring in film making and art history; work experience--general laborer and mechanic at a sawmill, smoke house operator, gas station cashier. **Claimant is currently employed as a part-time janitor at a post office. He works approximately five hours per week and earns \$210 per month, gross.**

(3) Claimant is currently performing Substantial Gainful Activity (SGA) as a janitor for a post office.

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

- (a) Crushed vertebrae;
- (b) Crushed collarbone;
- (c) Torn rotator cuff;
- (d) Compressed cervical disc; and
- (e) Hiatal hernia;

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

OBJECTIVE MEDICAL EVIDENCE (September 8, 2010)

MEDICAL SUMMARY:

Treating source report that the claimant retains the ability to perform less than sedentary tasks (page 3); treating source also

mentions that claimant has issues with memory and social interactions.

A magnetic resonance image showing herniated disc at C6-7.

ANALYSIS:

The treating source report cannot be afforded full controlling weight. The activities form completed by the claimant does not support these limitations. The treating source notes psychiatric limitations secondary to memory and social issues, but there are no limitations supporting this in the activities form either. The evidence does reasonably support that claimant retains the ability to perform sedentary, simple and repetitive tasks.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry, and grocery shopping. Claimant uses a cane approximately 15 times a month. He does not use a walker, wheelchair or shower stool. Claimant does not wear braces. Claimant was not hospitalized overnight as an inpatient in 2009 or 2010.

(7) Claimant has a valid driver's license and drives approximately 30 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

A September 30, 2010 DHS-49 (Medical Examination Report was reviewed).

The physician states the following current diagnoses: osteoarthritis of the neck, hypertension, left shoulder pain, hypothyroidism, Hyperlipidemia, rule out anxiety/depression, rule out migraines, and rule out GERD. The physician states that claimant is able to lift ten pounds frequently. He is able to stand and/or walk less than two hours in an eight-hour day. Claimant is able to use his hands/arms for simple grasping and fine manipulating. Claimant is able to use his feet/legs to operate food controls.

NOTE: The treating physician does not state that claimant is totally unable to work.

(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 treating physician states that claimant has to write things down. Claimant does not interact with many people. Claimant prefers to be alone. Claimant gets irritated easily around other people. The treating physician did not provide an adequate mental status evaluation for purposes of establishing a disability based on acute mental conditions.

(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 treating physician provides the following diagnoses: osteoarthritis of the neck, hypertension, shoulder pain (left), hypothyroidism, Hyperlipidemia, rule out anxiety, depression, migraines and GERD. The physician states that claimant is able to lift ten pounds occasionally. He is able to stand/walk less than two hours in an eight-hour day. He can use his hands/arms normally for grasping and fine manipulating, but unable to perform pushing-pulling. Claimant can use his feet/legs normally.

(11) Claimant thinks he is eligible for MA-P/SDA because of his combination of impairments. Claimant thinks that the doctors do not perform appropriate testing for his condition because he is unable to pay for the tests.

(12) Claimant recently applied for federal disability benefits from Social Security Administration (SSA). Claimant's SSI application is currently pending.

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).

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. Claimant only works five hours per week.

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 using the *de minimus* test.

Therefore, 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 is currently employed part-time as a janitor at a local post office. Claimant's work at the post office is light work.

The Medical/Vocational evidence of record shows that claimant has a reduced ability to lift and also to push-pull. He is somewhat limited in the amount of time he can stand and walk.

Based on the current medical evidence, in combination with claimant's current employment, he is able to perform light unskilled work at the post office.

Claimant does not meet 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] 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 is currently employed as a janitor for the local post office. He currently works five hours per week and earns \$210 per month gross.

Claimant's current employment shows that he is able to perform light sedentary unskilled work.

During the hearing, the claimant testified that a major impediment to his ability to work full-time is his neck and body 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.

Claimant is currently taking pain medications, and while these do not totally eliminate his pain, they do provide some relief and enable him to work at the post office.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his back dysfunction and his back/leg pain secondary to his back dysfunction.

Claimant currently performs an extensive list of activities of daily living, drives an automobile 30 times a month and is computer literate. In short, the collective evidence of record shows that claimant is fully able to perform sedentary work (SGA), five hours per week for the post office.

DHS-49, prepared by his treating physician creates a presumption of disability, for MA-P purposes. However, claimant's current employment rebuts this presumption.

Based on the above 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 26/261. Claimant is not disabled for MA-P/SDA purposes based on Steps 4 and 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: November 5, 2010

Date Mailed: November 8, 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:

