

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-21729

Issue No: 2009; 4031

Case No: [REDACTED]

Load No:

Hearing Date:

June 7, 2011

Branch 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 June 7, 2011, in Coldwater. The claimant personally appeared and testified under oath.

The department was represented by Staci Blouin (ES).

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) 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 (December 17, 2010) who was denied by SHRT (March 25, 2011), based on claimant's ability to perform

unskilled medium work. SHRT relied on Med-Voc Rule 203.22 as a guide. Claimant requests retro MA for November 2010.

- (2) Claimant's vocational factors are: age--51; education—11th grade; post high school education--GED; work experience—semi-truck driver (short haul 25 years).
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he worked as a semi-truck driver.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Right eye dysfunction;
 - (b) Left eye dysfunction;
 - (c) Significant cataracts in left and right eyes;
 - (d) Hypertension;
 - (e) Fifth finger of right hand has been amputated; and
 - (f) Fingers of right hand are disfigured (curled up).
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (March 25, 2011)

MEDICAL SUMMARY

In 11/2010, claimant's best corrected vision was right eye (hand motion) and left eye (normal limits).

ANALYSIS

The objective medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of medium work.

RECOMMENDED DECISION

Claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The medical evidence of record indicates that claimant retains the capacity to perform a wide range of medium work.

Therefore, based on claimant's vocational profile (approaching advanced age, 12th grade education, and medium work history) MA-P is denied using Med-Voc Rule 203.22 as a guide. Retroactive MA was considered in this case and is also denied.

SDA is denied per PEM 261 because the nature and severity of claimant's impairments would not preclude work activity at the above stated level for 90 days.

- (6) Claimant lives alone but has overnight visitors frequently. Claimant performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking (sometimes), dishwashing (sometimes), light cleaning, mopping (sometimes), vacuuming, laundry (sometimes), and grocery shopping (needs help). Claimant uses a "cane/stick" approximately 30 times a month. Claimant does not use a walker, wheelchair, or a shower stool. Claimant does not wear braces on his neck, back or legs. Claimant did not receive any inpatient hospital care in 2010 or 2011.
- (7) Claimant has a valid driver's license but does not drive an automobile due to his deteriorating eyesight. Claimant is not computer literate.
- (8) The following medical records are persuasive:
 - (a) A November 3, 2010 eye examination report (DHS-49-I was reviewed.

The ophthalmologist reports that the onset of claimant's visual defects is: right eye—age 51 and left eye—age 51.

The ophthalmologist states that claimant's visual acuity of the right eye is hand movement and visual acuity on the left eye is 50. The ophthalmologist reports that claimant's visual fields are constricted due to cataracts. The ophthalmologist provided the following recommendations:

██████████ will need to undergo cataract surgery in both eyes.

* * *

The ophthalmologist did not report that claimant was totally unable to work.

- (9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. There are no clinical assessments of claimant's psychiatric/psychological impairments in the record.
- (10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that he was unable to work due to his deteriorating eyesight, hypertension, the loss of his fifth finger of his right hand, inability to use his right hand normally. There is no current probative medical evidence in the record to establish that claimant is totally unable to work based on his combination of exertional impairments.
- (11) Claimant has not applied for SSI benefits from Social Security.

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 disabled for MA-P/SDA purposes.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working, or otherwise 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. Claimant must establish an impairment which is expected to result in death, has existed for 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).

SHRT decided that claimant meets the Step 2 severity and duration requirements based on 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 the Listings.

SHRT evaluated claimant's eligibility under the Listings and concluded that claimant's impairments do not meet the requirements of any 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 a short haul semi-truck operator. This was medium work, based on the [REDACTED].

The Medical/Vocational evidence of record establishes that claimant has severe cataracts in both eyes. Claimant's eyesight in his left eye is totally occluded; claimant is still able to see well enough in his right eye to perform many activities of daily living.

However, since claimant's previous work was truck driving, which requires excellent vision, he is no longer able to perform 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. **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.

Claimant's main allegation of disability is based on his deteriorating eyesight. Claimant's eyesight condition is due to significant cataracts in both eyes. The ophthalmologist who evaluated claimant's eyesight recommended cataract surgery for both eyes.

Claimant has established a significant visual impairment. However, claimant's visual impairment does not preclude him from doing all types of work. Persons with impaired eyesight can be trained to run small coffee stand/snack bars and then operate them with a high level of efficiency. Therefore, claimant's visual impairment does not totally preclude all substantial gainful activity.

Second, claimant alleges disability based on anxiety, hypertension, and gripping dysfunction in his right hand. None of these allegations have been substantiated by a physician or a psychiatrist. Since claimant has not substantiated these complaints, they cannot be the basis of MA-P/SDA disability.

The Administrative Law Judge concludes that claimant's testimony about his hand dysfunction, eye dysfunction, and anxiety are profound and credible but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant performs a significant number of activities of daily living, has an active social life with friends who frequently stay overnight at his house and has the ability to be resourceful and creative in meeting his daily needs.

Considering the entire medical, 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 the operator of a small news stand and as a greeter for [REDACTED].

In sum, the department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it denied claimant's MA-P/SDA benefits. Furthermore, claimant did not meet his burden of proof to show that the department's denial of his MA-P/SDA application was reversible error.

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 BEM 260/261.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby, AFFIRMED.

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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:

