

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-3825
Issue No: 2009
Case No: [REDACTED]
Load No:
Hearing Date:
February 24, 2011
Macomb 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 February 24, 2011, in Warren. The claimant personally appeared and testified under oath.

The department was represented by Sharhonda Clark (ES).

The Administrative Law Judge appeared by telephone from Lansing.

By the agreement of the parties, the record closed on February 24, 2011.

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 applicant (August 9, 2010) who was denied by SHRT (November 12, 2010) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.13 as a guide.
- (2) Claimant's vocational factors are: age--56; education—high school diploma; post high school education--none; work experience—trailer mechanic, machine operator and upholsterer.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2001 when he worked as a trailer mechanic.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Blood clot in left leg;
 - (b) Chemical imbalance in the brain;
 - (c) Deep vein thrombosis (DVT);
 - (d) Back pain; and
 - (e) Diabetes.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (November 12, 2010)

* * *

MEDICAL SUMMARY:

Claimant was seen at the hospital in 2/10 due to swelling, pain and decreased range of motion of the left leg.

Diagnosis was deep vein thrombosis (DVT)—femoral vein (records from DDS).

In 8/2010, claimant's cardiovascular and respiratory examinations were normal. His gait was normal. (Records from DDS.)

In 9/2010, the claimant walked with a limp. His respiratory, cardiovascular and abdominal examinations were normal. He had chronic back pain. There was no evidence of a neurologic disorder or neurologic deficit (page 9).

ANALYSIS:

Claimant had a DVT in 2/2010. In 8/2010, his gait was normal. In 9/2010, he had a limp but no evidence of a neurological deficit. Cardiovascular examination was within normal limits.

RECOMMENDATION:

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

The medical evidence of record indicates claimant retains the capacity to perform a wide range of medium work. In lieu of detailed work history, the claimant will be returned to other work.

Therefore, based on the claimant's vocational profile (advanced age, 12th grade education and history of unskilled and semi-skilled work); MA-P is denied using Vocational Rule 203.13 as a guide.

* * *

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), mopping (sometimes), and laundry. Claimant uses a cane twice a month. Claimant does not use a walker, wheelchair, or a shower stool. Claimant does not wear braces. Claimant was not hospitalized in 2010 or 2011.
- (7) Claimant has a valid driver's license and drives an automobile approximately twice a month. Claimant is computer literate. Claimant has a computer at home.
- (8) Claimant's medical evidence was correctly summarized by SHRT. See 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 (exertional) physical impairment expected to prevent claimant from performing all customary work functions. The [REDACTED] [REDACTED] report ([REDACTED]) reports an emergency room visit involving a possible blood clot in the left leg. The final diagnosis by the emergency room physician was deep vein thrombosis (DVT—femoral vein). The emergency room physician did not report that claimant was totally unable to work.

- (11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. The symptoms reported to SSA are similar to those under review here. SSA recently 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).

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 purposes. PEM/BEM 260. "Disability," as defined by MA-P 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.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. PEM/BEM 260.

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. 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. Also, to qualify for MA-P, the claimant must establish both the gainful work and the 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 Step 2 criteria. 20 CFR 416.920(c). SHRT decided that claimant meets the severity and duration requirements using 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 previously worked as a trailer maintenance man. This was medium work.

The Medical/Vocational evidence of record shows that claimant has an impairment. Claimant has a vein impairment in his left leg. This would preclude claimant from a position which required constant standing, lifting and walking. Based on the medical evidence of a DVT-femoral vein impairment, claimant is not able to return to his previous work as a trailer mechanic. Therefore, claimant does meet Step 4.

STEP #5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. 20 CFR 416.920(f). 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.

Based on the medical evidence of record, considered in its entirety, claimant is able to perform unskilled sedentary work. Notwithstanding claimant's left leg DVT impairment, he is able to perform the following simple, unskilled sedentary jobs: a ticket taker for a theater, parking lot attendant, or greeter for [REDACTED].

During the hearing, the claimant also testified that he had spondylolisthesis of the spine. There is no clinical evidence of this condition in the current medical record.

During the hearing, claimant testified that a major impediment to his return to work was back pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is credible and profound but out of proportion to the objective medical evidence as it relates to claimant's ability to work. There is no medical evidence in the record at this time, to establish that claimant's back dysfunction totally precludes him from employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. The emergency room physician evaluated claimant on February 6, 2010 did not report that claimant was totally unable to work. Also, claimant did not present an "off work" Order from his primary physician. The collective medical evidence shows that claimant is able to perform unskilled sedentary work (SGA) at this time.

Based on this analysis, the department correctly denied claimant's MA-P 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 disability requirements under PEM 260. Claimant is not disabled for MA-P purposes based on Step 5 of the sequential analysis as described above.

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

SO ORDERED.

/s/

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

Date Signed: June 1, 2011

Date Mailed: June 1, 2011

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: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]