

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: 2006-17384
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 17, 2009
Kent 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 October 17, 2006 in Grand Rapids. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on February 5 and July 2, 2007. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's third disability denial, the ALJ issued the decision below.

ISSUE

Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work on a sustained basis 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 MA applicant (March 8, July 7 and December 15, 2006), who was denied by SHRT (August 23, 2006, March 13, and June 26, 2007) based on claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA benefits for December 2005 and January-February 2006.

(2) Claimant's vocational factors are: age—47; education—high school diploma; post-high school education—2 years of college courses in music and business administration; work experience—freelance reporter for the [REDACTED] (skilled), telemarketing representative, senior cashier for [REDACTED] (semi-skilled), and cleaning service worker.

(3) Claimant is currently doing volunteer work at a local hospital. He works approximately 4 hours per week and has been doing so for approximately 8 weeks. His work consists essentially of clerical work such as stuffing envelopes.

(4) Claimant has not performed Substantial Gainful Activities (SGA) since July 2004, when he was a freelance reporter for the [REDACTED].

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

- (a) Takes medications for Crohn's disease;
- (b) Gets winded easily;
- (c) Complications from medication;
- (d) Full body rash; and
- (e) Chronic abdominal pain.

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

OBJECTIVE MEDICAL EVIDENCE (August 23, 2006):

A 5/2006 report from the treating gastroenterologist indicated a diagnosis of Crohn's colitis with frequent bloody diarrhea, abdominal pain and nausea. Mild anemia secondary to the bloody diarrhea was noted. He was 5'7" tall and weighed 143 pounds. His physical examination was normal (pages 11-12).

* * *

(7) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Sometimes it takes claimant additional time to complete these activities due to lack of stamina.

(8) Claimant has a valid driver's license but does not drive an automobile. Claimant is computer literate.

- (9) The following medical records are persuasive:

(a) A March 31, 2006 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: frequent bloody diarrhea, vomiting and abdominal pain, incontinence of stool, anemia, hypokalemia, and Crohn's colitis. The physician states that claimant may lift 10 pounds occasionally. He is able to stand at least 8 hours in an 8-hour workday. He is able to use his hands/arms for normal reaching and pushing/pulling, but unable to use his left arm for grasping and fine manipulating. Claimant is able to use his right leg normally.

(b) A [REDACTED] was reviewed. The physician provides the following findings: The mucosa is markedly abnormal, with erosion, hemorrhages, exudates, pseudo polyps and furrows. There is marked inflammation between the ascending colon and the sigmoid colon. There is normal mucosa in the rectum and the low sigmoid colon area. Random biopsies were taken throughout. The physician provides the following

impression: normal colonoscopy, compatible with Crohn's colitis. No work limitations were reported.

- (c) A [REDACTED] was reviewed. The physician provides the following impression: inflammatory bowel disease, probably Crohn's colitis. No work limitations are noted.

(10) The medical evidence of record does not establish a severe physical impairment expected to prevent claimant from performing any substantial gainful work on a sustained basis. While the record does show that claimant has Crohn's colitis, there is no probative evidence in the record to establish a permanent debilitating condition that would preclude all substantial gainful employment.

(11) Claimant's recent application for Social Security disability was denied. Claimant filed an appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/retro MA based on the impairments listed in paragraph #4, above. The medical records provided by claimant verify the following diagnoses: Crohn's colitis.

DEPARTMENT'S POSITION

The department thinks claimant has failed to establish a condition which meets the severity and duration because the medical evidence of record does not document a physical impairment that significantly limits claimant's ability to perform basic work activities.

LEGAL BASIS

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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 physical impairments meet the department's definition of disability for MA-P/retro MA purposes. PEM 260. "Disability," as defined by MA-P and SDA standards, is a legal term which is individually determined by a 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 is 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, or engaging in work of a type generally performed for pay. PRM Glossary, page 34.

The evidence of record shows that claimant is not currently performing SGA. While he volunteers at a local hospital (4 hours a week) his hospital volunteer work does not rise to the level of Substantial Gainful Activity.

Therefore, claimant meets the Step 1 disability requirements.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means the severe impairment is expected to last for 12 continuous months, or result in death.

SHRT thinks that claimant does not have an impairment which meets the severity and duration requirements.

The Administrative Law Judge concludes that claimant's diagnosis of Crohn's colitis, in combination with his chronic abdominal pain satisfies the Step 2 severity and duration requirements.

STEP #3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations.

Claimant does not allege that he meets any of the listings. Therefore, the Administrative Law Judge concludes that claimant has not established disability based on Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a freelance reporter for the [REDACTED]. He is also currently writing his own autobiography. Claimant's previous work as a freelance newspaper report was sedentary work.

Sedentary work may be defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

The evidence of record shows that claimant is currently doing sedentary work. He works 4 hours per week at a local hospital and he is also currently engaged in writing his autobiography. Since claimant's previous work, as a freelance reporter for the [REDACTED] was also sedentary work, the Administrative Law Judge concludes that claimant is able to performing his previous work and is not eligible for MA-P benefits at this time.

During the hearing, claimant testified that he suffers from abdominal pain in conjunction with his Crohn's colitis. Evidence of pain, alone, is insufficient to establish disability. 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. In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his abdominal pain in combination with his Crohn's colitis. The fact that claimant is doing volunteer work and is actively writing his own biography, suggests that he is able to do substantial, gainful sedentary work.

This case may be summarized as follows:

Vocational Evidence: Claimant is 47 years old and has a high school diploma. He also has 2 years of college majoring in music and business administration. Claimant is currently performing volunteer work for a local hospital 4 hours per week. He is also writing his own autobiography. Claimant is not currently employed. (Claimant's Testimony)

Medical Evidence: Claimant's most recent diagnoses are: Crohn's colitis. (SHRT Decision, Exhibit B-1, page 20)

Work Limitations: Claimant has chronic abdominal pain, and is incontinent of stool. However, there is no medical evidence from the physician submitting the reports that claimant is unable to perform sedentary work.

Disability Ruling: Using the MA-P definition of disability, and based on a careful assessment of the entire record, the Administrative Law Judge concludes that claimant is currently able to perform sedentary work, and as such, he is not disabled for MA-P purposes based on Step 4 of the sequential analysis procedure.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet the MA-P disability requirements under PEM 260.

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

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 5, 2009

Date Mailed: October 5, 2009

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/cv/tg

cc:

