

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: 2007-05517
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 11, 2007
Muskegon 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, an in-person hearing was held on April 11, 2007. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Robin Brand (FIM).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so his new evidence could be reviewed by SHRT. Claimant did not submit new medical evidence prior to the Record Close Date.

On February 15, 2007, the Administrative Tribunal Director issued a Summary Order of Partial Disposition awarding MA-P and SDA benefits effective January 2006.

ISSUE

Did claimant establish a severe impairment expected to preclude him from substantial gainful work on a sustained basis for retro MA-P (October, November and December 2005)?

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 applicant (January 29, 2006) who was denied by SHRT (February 2, 2007). SHRT denied retro MA-P because claimant was earning substantial gainful income during the retro months of October, November and December 2005.

(2) Claimant's vocational factors are: age—25; education—11th grade; post high school education—GED; work experience: cook for [REDACTED] (semi-skilled) and cook at [REDACTED] (semi-skilled).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since June 2006 when he was a cook at the [REDACTED].

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

- (a) Hydradenitis (a skin condition involving painful boils);
- (b) Status post surgery (March 2006) to remove boils;
- (c) Limited ability to bend and walk.

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

OBJECTIVE MEDICAL EVIDENCE (February 2, 2007):

Medical records indicate claimant has had persistent problems with hydradenitis suppurative since before December 2006:

Analysis:

Claimant has been approved for Social Security Administration disability benefits with an onset of January 2006. He worked and earned SGA-income prior to this date.

The medical information supports an effective date of October 2005; however, claimant was earning SGA income October 2005 to December 2005 which precludes finding him disabled for that period.

* * *

Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, light cleaning, mopping (sometimes), vacuuming (sometimes), laundry (sometimes), grocery shopping.

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

(8) The following medical records are persuasive:

(a) A July 26, 2006 Medical Examination Report (DHS-49) was reviewed. The infectious disease physician provided the following assessment:

Current diagnosis: hydradenitis.

The infectious disease physician did not report any work limitations.

(b) A [REDACTED] history and physical report was reviewed.

The surgeon provided the following history of present illness:

Claimant is seen here in follow-up for his hydradenitis. He continues to lose weight. He has been to see [REDACTED] as well as [REDACTED], and no one has a great explanation for why he continues to lose weight, though he is chronically bothered by his hydradenitis in the supra pubic area as well as bilateral groin areas. The auxiliary areas have not been bothering him. He is not on antibiotics at this point. I have given him a script for Bactrim DS BID with a month's supply with three refills and I have told him to start on this immediately. I have told him that I think the best way to minimize his discomfort with this is to excise these areas. **He has not been able to work for about a month because of the pain in this area.** I had told him he would need an incision in the supra pubic area across the lower abdomen as well as one in each groin. We will do this first as a supine and as a stirrups case.

* * *

IMPRESSION:

Extensive hydradenitis of the supra pubic area at bilateral groins.

* * *

- (c) A [REDACTED] infectious diseases progress note was reviewed. The physician provided the following assessment:

- (1) Excessive weight loss. I am somewhat suspicious as this relates to extensive hydradenitis suppurativa. He appears to have significantly active disease at the present in the peritoneal area. I believe you can also get some arthritis with this condition. This needs to be aggressively managed. I have asked him to call [REDACTED] and move up the surgical procedure and will place him on Doxycycline 100 mgs twice a day in the meantime. I am going to place a PPD and do an HIV test for the two more remote possibilities. If he continues to lose weight despite these interventions, he needs a CT scan of his abdomen and pelvis. Another illness associated with weight loss and hydradenitis is Crohn's disease, but the fact that he is constipated essentially rules that out.

* * *

- (d) A [REDACTED] Social Summary (FIA-49B) was reviewed. On this document, the Medicaid Advocate for [REDACTED] reports that [REDACTED] provided an onset date of October 28, 2005 for claimant's boils.

- (9) The prohibitive medical evidence does not establish an acute physical condition expected to prevent claimant from performing customary work functions for the required period of time. The medical records indicate that claimant has had persistent problems with hydradenitis since before December 2006. The most recent diagnoses are: excessive weight loss

and extensive hydradenitis suppurativa. There is insufficient probative evidence of a work function limitation in the medical records to date.

(10) Claimant's most prominent complaint is the pain and post surgical complications from the treatment he has received for his hydradenitis.

(11) Claimant has applied for federal disability benefits. In February 2007, the Social Security Administration approved SSI and RSDI benefits for claimant based on his hydradenitis. The Social Security disability onset date is January 1, 2006.

(12) On February 15, 2007, the Administrative Tribunal Director issued a Summary Order of Partial Disposition awarding MA-P and SDA benefits effective January 2006.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] Associates on claimant's request for hearing as follows:

I am filing this request on behalf of [REDACTED] to appeal the 9/08/2006 denial of his 1/27/2006 application with retro coverage to October of 2005. [REDACTED] was hospitalized in October, November and December of 2005 and January of 2006 for recurrent bilateral groin hydradenitis.

[REDACTED] has been approved by Social Security based on disability.

We request the department to obtain an SOLQ to verify this approval with an onset date.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has established disability for MA-P/SDA purposes based on the intent and severity of his condition using SSI Listing 8.05.

The department thinks that claimant is eligible for MA-P and SDA effective January 1, 2006.

SHRT denied MA-P/retro for October, November and December, 2005 because claimant was earning substantial gainful income, as established by the Social Security Administration until January 1, 2006.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Family Independence Agency 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 does 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 purposes. PEM 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 is earning substantial income, he is not eligible for MA-P/retro.

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 during the period in question (October, November and December 2005); claimant was performing substantial gainful activity and did earn substantial income, as defined by the Social Security Administration.

After a careful review of the evidence in this matter, the Administrative Law Judge concludes that during the period in question (October, November, and December 2005), claimant was performing substantial gainful activity and did earn substantial income, as defined by the Social Security Administration.

Therefore, the Administrative Law Judge denies claimant's request for retro MA-P for the months in question for the following reasons:

- (1) The Social Security Administration carefully considered claimant's medical evidence and his employment record for the period in question and decided, based on the extensive evidence which was obtained, that claimant was not eligible for RSDI/SSI coverage for October, November, and December 2005 because claimant earned substantial gainful income in those months.
- (2) During the DHS hearing, claimant testified that his last month of employment was June 2006.

Therefore, claimant is not eligible for retro benefits for October, November and December 2005.

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/retro disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P/retro application for October, November and December 2005 is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: September 11, 2009

Date Mailed: September 14, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/tg

cc:

