

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: 2007-11651
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 4, 2007
Kalamazoo 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 in Kalamazoo on September 4, 2007. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Marivel Garcia (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team on October 18, 2007. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge made the final decision below.

ISSUE

(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 a MA-P/retro applicant (September 27, 2006) who was denied by SHRT (July 16, 2007) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age—36; education —high school diploma; post high school education—none, work experience—tree cutter for a nursery, automobile salesman and detailer, owned and operated a lawn sprinkler business.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he was a tree cutter for a nursery in July 2007.

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

- (a) Colon dysfunction;
- (b) Low energy.

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

OBJECTIVE MEDICAL EVIDENCE (JULY 16, 2007):

Claimant had a sigmoid resection on 6/30/2006 for extensive diverticular disease (page 113). Approximately 24 hours after his surgery, he developed abdominal bleeding and re-explored. A hematoma was removed and no bleeding source was found (page 115). Claimant later had an admission for a small bowel obstruction which resolved with conservative therapy.

Claimant was admitted again in 8/8/2006 for constipation and left sided pain (page 34). He was treated with pain medications. The doctor did not feel it was recurrent diverticulitis but probable constipation. He was given laxatives and became more comfortable. His white blood count continued to be normal (page 30).

On 8/13/06, claimant was admitted again due to left lower quadrant pain, nausea and inability to take his oral antibiotics. Claimant indicated that he drinks beer in a modest amount on a daily basis (page 23). A CT scan showed persistence of a known abscess adjacent to the sigmoid staple line, with otherwise overall improvement of the sigmoid colon. His nausea and vomiting followed by diarrhea was felt to probably be related to irritation related to antibiotics and milk of magnesia (pages 23-24).

ANALYSIS: The medical information in the file indicates that between 6/2006 and 8/2006 claimant went to the emergency room and/or was admitted to the hospital multiple times for abdominal pain. He underwent sigmoid resection on 6/30/2006. He had a hematoma removed shortly after that and then a small bowel obstruction which resolved with conservative therapy. A CT scan in 8/2006 showed improvement of the sigmoid colon. There was no indication in the file of a significant weight loss. Based on the medical information in the file, claimant's condition does not meet any Listing level. It is expected that his condition improved and did not prevent all types of work for twelve months in a row.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing and cooking.

(7) Claimant does not have a valid driver's license, and does not drive an automobile.

Claimant is computer literate.

(8) The following medical records are persuasive:

A July 17, 2006 medical examination report (DHS-49) was reviewed. The physician provided the following diagnoses: Patient had a sigmoid resection for diverticulosis on 6/30/2006. The physician states that claimant is totally unable to do any lifting. He is able to walk less than two hours in an eight-hour day. He is able to sit less than eight-hours in an eight-hour day. Physician reports that claimant is able to use his hands/arms for

simple grasping and reaching and he is able to use his feet/legs normally. This was claimant's condition approximately thirty days after his sigmoid resection.

(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. There is no clinical evidence in this record to establish that claimant has a severe mental impairment. Claimant did not submit a DHS-49D or DHS-49E to establish his residual mental functional capacity.

(10) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do show that claimant had significant sigmoid colon dysfunction for the period June through August 2006. However, the medical records show that claimant's sigmoid impairments were successfully treated by his physician. Claimant's physician did not state claimant is totally unable to work for 12 months, continuously.

(11) Claimant admits that he is able to work at this time. He is requesting payment of his hospital bills for the period June 2006 through July 2007.

(12) Claimant applied for federal disability benefits with the Social Security Administration. The Social Security Administration denied his application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized in the [REDACTED] Hearing Request as follows:

Claimant was hospitalized in June 2006 for sigmoid resection due to diverticular disease; he was readmitted in July and August of 2006 for complications from that surgery, including a small bowel obstruction. Claimant also suffers from anxiety and depression.

DEPARTMENT'S POSITION

The department thinks that claimant has normal residual functional (RFC).

The department thinks that claimant was totally disabled for the period June 2006 through August 2006.

However, the department thinks, based on the medical information in the file that claimant's condition does not meet any Listing. Furthermore, it is expected that claimant's sigmoid condition will continue to improve and that this condition did not prevent claimant from doing all types of work for twelve continuous months.

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...[The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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 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.

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

Claimant's 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.

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.

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least twelve months. 20 CFR 416.909.

Also, to qualify for MA-P, 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, claimant does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT found that claimant does not meet the severity and duration requirements. In particular, claimant's sigmoid colon condition did not last twelve consecutive months.

Therefore, claimant does not meet the Step 2, disability requirements.

STEP 3

The issue at Step 3 is whether claimant meets the listing of impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

Claimant does not meet the Step 3 disability requirements.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as tree cutter for a nursery.

Claimant's work as a tree cutter may be defined as follows:

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

The medical/vocational evidence of record establishes that claimant is able to return to his previous work as a tree cutter. In the past, claimant owned and operated his own lawn sprinkler business. Claimant is able to return to that type of work as well.

Therefore, claimant does not meet the Step 4 disability requirements.

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] [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform his previous work as an owner operator of a sprinkler company. He is also able to work as a carry-out clerk at a grocery store, as a ticket taker for a theatre, as a pizza delivery driver, as a parking lot attendant and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P application due to his failure to establish an impairment which meets the twelve month duration requirements.

DECISION AND ORDER

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

Claimant is not disabled for MA-P eligibility purposes based on Step 5 of the sequential analysis, as enumerated above.

Accordingly, the department's denial of claimant 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: August 10, 2009

Date Mailed: August 11, 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/sd

cc:

