

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: 2007-19104  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
October 11, 2007  
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 in Grand Rapids on October 11, 2007. Claimant personally appeared and testified under oath.

The department was represented by Cheryl Christiansen (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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 August 10, 2009. Claimant waived the timeliness requirements 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.

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/retro applicant (February 27, 2007) who was denied by SHRT (September 19, 2007) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for November-December 2006 and January 2007.

(2) Claimant's vocational factors are: age--54; education--high school diploma; post-high school education--associate's degree from [REDACTED] in Marketing and Advertising; work experience--worked as a conductor for the [REDACTED], as a senior graphic artist for [REDACTED], and as an automobile sales representative.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he was a conductor for [REDACTED] Railway in 2001. Claimant was injured in a work-related accident at [REDACTED].

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

- (a) Hearing impairment;
- (b) Status-post left rotator cuff tear;
- (c) Status-post right arm/shoulder surgery;
- (d) Carpal tunnel syndrome (bilateral).

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

**OBJECTIVE MEDICAL EVIDENCE (September 19, 2007):**

Claimant is a status-post stroke and pacemaker placement 10/2006. As of 5/2007, claimant reports worsening of his impairments. He reports weakness and hearing loss. No additional medical information was submitted for review of current functional status.

ANALYSIS: Additional medical information is needed.

\* \* \*

**SUPPLEMENTAL MEDICAL EVIDENCE (August 17, 2009):**

**MEDICAL SUMMARY:**

The results of the hearing test in 2007 showed his speech discrimination was 92% in the left ear and 85% in the right ear. Hearings has improved with the use of hearing aids in both ears. (Page 126)

**ANALYSIS:**

The evidence in file is inadequate to assess all of the claimant's alleged impairments.

**RECOMMENDED DECISION:**

The agency is to obtain a complete physical examination, by a licensed physician (MD or DO), in narrative format, and should include the following:

1. Vital signs (height, weight, and blood pressure);
2. Heart and lung sounds, with chest pain description if applicable; and,
3. A brief neurological assessment with the same physician performing this physical examination;
4. Range of motion, in degrees, of affected joints/spine & grip strength;
5. Straight leg raises; and,
6. Description of gait (with or without ambulatory device).

\* \* \*

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, vacuuming, and grocery shopping. Claimant lives with his wife.

(7) Claimant has a valid driver's license and drives an automobile approximately 20 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] showed speech discrimination was 92% in the left ear and 85% in the right ear. Hearing improved with the use of hearing aids in both ears.

(9) The probative medical evidence does not establish an acute mental impairment expected to prevent claimant from performing all customary work functions. There are no psychological/psychiatric medical reports in this record.

(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 show the following impairments: status-post stroke; status-post cardiac stent placement; and status-post right arm surgery.

(11) Claimant's most prominent complaint is his hearing loss.

(12) Claimant has applied for federal disability benefits with the Social Security Administration. The Social Security recently denied claimant's disability application. Claimant filed a timely appeal.

(13) SHRT requested that claimant obtain additional medical information. Claimant agreed to attend two State examinations.

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

Claimant thinks he is entitled to MA-P/retro based on the impairments listed in paragraph #4, above.

At SHRT's request, claimant obtained two additional medical evaluations.

**DEPARTMENT'S POSITION**

The department thinks that additional medical information is needed to assess the severity of claimant's impairments.

**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 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 mental/physical impairments meet the department's definition of disability for MA-P and SDA purposes. PEM 260 and 261. "Disability," as defined by MA-P/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. Claimants 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 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 12 months. 20 CFR 416.909.

Also, to qualify for MA-P, claimant must satisfy 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 ability to do basic work activities, claimant does not meet the Step 2 criteria.

SHRT found that claimant meets the severity and duration criteria.

### **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.

Therefore, 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 a conductor for [REDACTED]. Claimant's previous work as a railway conductor may be classified as follows:

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The medical/vocational evidence of record does not show any lifting limitations.

Therefore, claimant is able to lift the amount required for light work. Since claimant is able to meet the lifting/sitting/standing and walking requirements of light work, he is able to return to his previous work as a railway conductor.

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] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to do sedentary/light work. Claimant's vocational profile shows an individual approaching advanced age (age 54) with a high school education and an associate's degree from [REDACTED]. Based on this analysis, claimant is able to work as a carry-out clerk at a grocery store, as a ticket taker for a theatre, 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 ability to perform Substantial Gainful Activity.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant currently performs extensive activities of daily living, has an active social life, and drives an automobile on a regular basis. This means that claimant is able to perform sedentary/light work.

Claimant does not qualify for MA-P disability benefits under Step 5 of the sequential analysis.

#### 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.

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

SHRT has requested a new physical exam. The department shall provide claimant with an exam, as specified by the August 17, 2009 SHRT decision, by September 30, 2009.

If claimant submits a new medical exam, in accordance with SHRT's specifications, by October 15, 2009, the ALJ will reconsider claimant's February 2007 application.

SO ORDERED.

/s/ \_\_\_\_\_  
Jay W. Sexton  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: August 18, 2009

Date Mailed: August 19, 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/cv

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