

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: 2007-20124
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 25, 2007
Wexford 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 Cadillac on October 25, 2007. Claimant personally appeared and testified under oath.

The department was represented by Linda L. VanHouten (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on October 25, 2007. Claimant waived the time limit requirements so that his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, 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/retro applicant (November 12, 2006) who was denied by SHRT (October 1, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for August, September and October, 2006.

(2) Claimant's vocational factors are: Age 54; education -- 12th grade; post high-school education -- none; work experience -- cherry sorter (unskilled), ink mixer and printer for a screen-printing company (semiskilled) and production supervisor (semiskilled).

(3) Claimant has not performed substantial gainful activity (SGA) since he worked as a screen-printer in 2003.

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

- (a) Emphysema;
- (b) Feet/ankles hurt;
- (c) Stuttering (secondary to psychotropic medications);
- (d) Short-term memory problems;
- (e) Right hip arthritis;
- (f) Stomach cancer;
- (g) Status post stomach cancer surgery in November, 2006; and
- (h) Anemia.

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

OBJECTIVE MEDICAL EVIDENCE (October 1, 2007)

The medical records of evidence reported claimant status post successful partial gastrectomy 11/16/2006. At discharge 11/27/2006, he was doing well. On examination the heart was functioning with regular rate and rhythm. The lungs were clear to auscultation bilaterally. The chest x-ray showed a normal sized heart. The right hip and shoulder x-rays were negative (pp. 14, 21, 35, and 49).

Claimant reported depression secondary to his medical problems. At the mental status examination he was oriented to time, place and person with no formal thought disorder or psychosis. Speech was logical, coherent and goal-directed. Judgment and insight were fair. Cognition was grossly intact (p. 125).

ANALYSIS: The impairments are improving with treatment.

* * *

- (6) Claimant performs the following activities of daily living (ADL's): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping.

- (7) Claimant does not have a valid driver's license and does not drive. Claimant is not computer literate.

- (8) The following medical records are persuasive:

- (a) A [REDACTED] medication review was considered. The psychiatrist provided the following subjective evidence:

Claimant indicates that he has been doing well. He reports no new problems or concerns except for the fact that he was about two weeks ago diagnosed with stomach cancer and he is going to have surgery sometime in the next couple of weeks in order to try to have them take it all out and also look for any metastasis. He indicates that he is anxious about this and not sleeping quite as well as he had been in the past. He reports otherwise doing well. He

describes his mood as being stable. He reports that he has adequate energy, appetite and motivation. He denies any hopeless or helpless feelings. He reports adequate interest in things. He is able to have enjoyment and fun. No hopeless or helpless feelings. No homicidal or suicidal ideation or plan. No distress. No symptoms and psychosis. He denies anger, irritability or mood swings. Substantial Axis II component with chronic self-defeating and passive-dependent personality theme still present. However, largely these are improving as well. There are no other psychiatric complaints or concerns and there is no distress.

* * *

OBJECTIVE/MENTAL STATUS EXAM:

White male, alert, cooperative, pleasant, good eye contact, adequate hygiene and grooming, casually dressed. No psychomotor agitation or retardation. Speech is logical, coherent, goal-directed. Mood is nearly euthymic. Affect was broad. Judgment and insight fair. Cognition grossly intact. He is oriented X3. No formal thought disorder. No delusions or hallucinations. No homicidal or suicidal ideation.

DSM III Diagnosis: Axis I -- Major depression, single episode; dysthymia; history of alcohol abuse/dependency. Currently in remission for about two weeks. Axis V/GAF -- Currently about 65 to 70. Best likely 70.

(b) An [REDACTED] medication review was considered. The psychiatrist provided the following subjective evidence:

Claimant is present today with [REDACTED] worker. Claimant has been at the [REDACTED] over the last few weeks. He just recently got out about a week ago. There is some indication that the [REDACTED] staff thought that he might have been drinking after he got out of [REDACTED], however he denies this. He reports that he is learning to recognize triggers, learning to realize how to deal with them a little better. We discussed the importance of him talking to people about them, both friends as well as his case management and also getting his support staff in place. We also discussed the potential for getting some alcohol

scripts, saliva scripts, that if others accuse him of drinking in his home, he is able to prove that he is not, so that he does not lose his placement. He indicates that he has tolerated the Artane well and that he has not been confused at all. He reports that with the Geodon, his mood has been stable and the increase has helped him he feels since he was last seen here in May. He is future oriented and reports adequate sleep and appetite, good levels of energy and motivation, adequate enjoyment and good concentration. There is no distress. He is future oriented and there are no hopeless or helpless feelings, no homicidal or suicidal ideation or plan, no symptoms of psychosis. Substantial Axis II component to his Axis I symptomatology with chronic self-defeating and passive dependent personality theme that to a large degree will tend to exacerbate stress and increase dysphoria as well as anxiety symptomatology. No other psychiatric complaints.

OBJECTIVE/MENTAL STATUS EXAM:

White male, alert, cooperative, pleasant, good eye contact, adequate hygiene and grooming, casually dressed. No psychomotor agitation or retardation. Speech is logical, coherent, goal-directed. Mood is nearly euthymic. Affect was broad. Judgment and insight fair. Cognition grossly intact. He is oriented X3. No formal thought disorder. No delusions or hallucinations. No homicidal or suicidal ideation or plan.

DSM ASSESSMENT: Axis I -- Major depression, single episode; dysthymia; history of alcohol abuse/dependency. Currently in remission for about two to three weeks. Axis V/GAF -- 65 to 70. Best likely 70.

- (c) A [REDACTED] medication review was considered. The psychiatrist provided the following subjective information:

Claimant indicates that generally he has been doing well. He reports that he plans on moving out. He has Section 8 and is going to move out of the [REDACTED]. He indicates that since being increased on the Geodon, there has not been really much of any benefit in terms of any dysthymic reaction in his impairment, which still does continue to some extent. He was not able to tolerate Cogentin without getting confused. However, we have not tried Artane, but

he does note that with the decrease in Geodon, he has been a little bit more down than he was before. He has been drinking alcohol to some extent, but reports at most a pint every three weeks. He denies getting drunk. He reports adequate sleep, appetite, good levels of energy and motivation. Activity level is good. He reports still able to have enjoyment and fun. He is future oriented. There is no distress. There is no homicidal or suicidal ideation or plan, no symptoms of psychosis. However, there is a strong Axis II component to his presentation, and he has chronic self-defeating passive/dependent personality themes that to a large degree influence Axis I symptomatology. No other psychiatric complaints.

OBJECTIVE MENTAL STATUS EXAM:

White male, alert, cooperative, pleasant, good eye contact, adequate hygiene and grooming, casually dressed. No psychomotor agitation or retardation. Speech is logical, coherent, goal-directed. Mood is nearly euthymic. Affect was broad. Judgment and insight fair. Cognition grossly intact. He is oriented X3. No formal thought disorder. No delusions or hallucinations. No homicidal or suicidal ideation or plan.

DSM ASSESSMENT: Axis I -- Major depression, single episode; dysthymia; history of alcohol abuse/dependency. Currently in remission for about three months. Axis V/GAF -- Currently about 65 to 70. Best likely 70.

* * *

(9) The probative medical evidence does not establish an acute mental (non-exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do show the following diagnoses: Depression, dysthymia, history of alcohol abuse dependency with a GAF of 65-70.

(10) The probative medical evidence does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records do show the following exertional impairments: status post partial gastrectomy (successful) and emphysema. No significant work limitations were reported by the physicians who evaluated claimant.

(11) Claimant's most prominent complaint is short-term memory dysfunction and his stuttering and hand-shaking.

(12) Claimant has applied for federal disability benefits with the Social Security Administration. The Social Security Administration has recently denied applications on two occasions. Claimant has filed a timely appeal.

CONCLUSIONS OF LAW

Claimant's Position

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

Department's Position

The department thinks that claimant has the ability to perform all normal work functions. The department thinks that the medical evidence of record indicates claimant's condition has improved and should continue to improve with treatment and not prevent all substantial gainful activity for 12 months from the date of onset or from the date of claimant's surgery. The department denied claimant's MA-P application due to lack of severity and duration.

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 (formerly known as the Family Independence Agency) 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 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).

A statement by a medical source 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).

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 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 of record shows that claimant is not currently performing SGA.

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 from the date of application. 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 limits 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 meets the severity and duration requirements.

Claimant meets 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 a cherry sorter on a seasonal basis. Prior to that, he worked as a printer at a screen-printing company.

Claimant's work as a cherry sorter may be defined 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 shows that claimant has some difficulty using his hands, difficulty with stuttering, and depression. Claimant's difficulty using his hands would preclude him from working as a cherry sorter.

Claimant is not able to return to his previous work as a cherry sorter.

Claimant meets 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 evidence of record, taken as a whole, establishes that claimant is able to perform sedentary/light work. Claimant is able to work as a carry-out clerk at a grocery store, as a ticket-taker for a theater, as a pizza delivery driver, as a parking-lot attendant and as a greeter for [REDACTED].

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his depression, hand-shaking, and stuttering. Claimant currently performs or is able to perform numerous activities of daily living and has an active social life. This means that claimant is able to perform sedentary/light work.

Based on this analysis, the department correctly denied claimant's MA-P/retro 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 standards under PEM 260. Claimant is not eligible 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 Ismael Ahmed, Director
Department of Human Services

Date Signed: August 14, 2009

Date Mailed: August 18, 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.

2007-20124/jws

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/jj

cc:

