

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: 2007-30063
Issue No: 2009
Case No: V1228261A
Load No: 2506010402
Hearing Date:
January 29, 2008
Genesee 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 four-way telephone hearing was held in Flint and in Jackson (prison) on January 29, 2008. Claimant appeared by telephone from the [REDACTED].

Claimant was represented by [REDACTED].

The department was represented by Earley Collins (ES). The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. The medical evidence was sent to the State Hearing Review Team (SHRT) on August 24, 2009 for the second SHRT review. Claimant waived the timeliness requirements so his new medical evidence could

be reviewed by SHRT. After SHRT's 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-P applicant (February 14, 2006) who was denied by SHRT August 25, 2009 due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests benefits for the month of February, 2006 only.

(2) Claimant's vocational factors are: Age 52; education -- ninth grade; post high-school education -- none; work experience -- machine operator at an auto-parts factory.

(3) Claimant has not performed substantial gainful activity (SGA) since he was a machine operator in a parts factory in approximately 2006.

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

- (a) Bipolar disorder;
- (b) Low back dysfunction;
- (c) Kidney dysfunction;
- (d) Liver dysfunction; and
- (e) Needs dialysis.

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

OBJECTIVE MEDICAL EVIDENCE (August 25, 2009)

The claimant is alleging disability due to hyperparathyroidism, GERD, low back pain, carpal tunnel syndrome, and depression. He is 53-year-old and has a limited education with a history of unknown work. Denied due to insufficient evidence.

* * *

(6) Claimant is currently incarcerated. In February, 2006 he was able to dress (with help) and bathe (needs help).

(7) In February, 2006 claimant had a valid driver's license. Claimant is not computer literate.

(8) The following medical records are persuasive: See SHRT summary at paragraph #5, above.

(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 the record that claimant has ever been evaluated by a psychiatrist or a Ph.D. psychologist. Claimant did not submit a DHS-49D or a DHS-49E.

(10) The probative medical evidence, standing alone, does not establish an acute physical (exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do show that claimant had thyroid surgery in [REDACTED] in February, 2006. The discharge summary was not submitted by claimant's representative.

(11) Claimant's most prominent complaint is his mental dysfunction in combination with kidney and liver dysfunctions.

- (12) It is not known whether claimant has applied for federal disability benefits.

(13) Claimant does not use a cane, walker, or wheelchair for ambulation.

CONCLUSIONS OF LAW

Claimant's Position

Claimant's position is summarized in the [REDACTED] hearing request (September 28, 2006) as follows:

* * *

The FIA-1150 denial notice is inadequate. The cited policy legally is incorrect. The cited policy refers to disability and the issue for denial is a verification issue. The submitted medical records that should have been forwarded by the local office denial not processed.

* * *

Claimant is requesting current MA benefits for February, 2006, only.

Department's Position

The department thinks that claimant has not provided sufficient medical information to establish a mental or physical disability which meets the MA-P eligibility requirements.

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).

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 does meet the Step 1 eligibility test.

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/SDA, 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, he does not meet the Step 2 disability criteria. 20 CFR 416.920(c).

SHRT found that claimant does not meet the severity and duration requirements.

Based on the *de minimus* test, claimant meets Step 2.

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 eligibility test.

Step 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a machine operator for a parts factory.

The medical/vocational evidence of record shows that claimant has a reduced ability to lift.

Claimant is not able to return to his previous work as a machine operator for a parts factory, due to his lifting restrictions.

Claimant meets the Step 4 eligibility test.

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 light/sedentary work. Claimant is 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]. Claimant would be able to perform these functions but for the fact that he is currently incarcerated.

During the hearing, claimant testified that the major impediment to his return to work was his kidney/liver dysfunction. Claimant plans to receive dialysis treatment. Dialysis treatment would not totally preclude employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his mental impairment in combination with his liver and kidney dysfunctions. But for the fact that claimant is incarcerated, he would be able to perform numerous activities of daily living, have an active social life and drive an automobile. This means that claimant is able to perform sedentary/light work (SGA).

Based on this analysis, the department correctly denied claimant's MA-P 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 requirements under PEM 260. Claimant is not disabled for MA-P purposes based on Step 5 of the sequential analysis, as described above.

Accordingly, the department's denial of claimant's 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 6, 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/jj

cc:

