

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: 2008-16840
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 17, 2008
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, a telephone hearing was held in Kalamazoo on September 17, 2008. Claimant personally appeared and testified under oath.

The department was represented by Anna Kelly (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was received on September 17, 2008 and the record closed on that date. Claimant's medical evidence was submitted to the State Hearing Review Team (SHRT) on September 17, 2008. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability denial, the Administrative Law Judge issued the decision below.

ISSUES

Did the department establish medical improvement that enabled claimant to perform substantial gainful activity for MA-P purposes?

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 current MA-P recipient. The department proposes to close claimant's MA-P based on medical improvement. SHRT issued a decision (May 22, 2008) stating that the medical record showed medical improvement and that claimant was no longer eligible for MA-P because he could perform substantial gainful activity. The original approval date for claimant's MA-P was January 2007. The basis for claimant's MA-P approval in 2007 was Listings 1.04(a), 1.02(b), 11.14 and 11.08. These Listings relate to claimant's right arm nerve dysfunction.

(2) Claimant's vocational factors are: age--41; education—high school diploma, post-high school education—[REDACTED] in Tool and Die, journeyman tool and die maker; work experience—janitor for [REDACTED], [REDACTED], journeyman tool and die maker (20 years).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since September 2008 when he was employed at the [REDACTED] as a janitor. Claimant is currently an active recipient with the [REDACTED]. They are helping him start his own business as a woodworker.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 20, 2008)

Claimant has a long history of alcohol abuse. In 6/2006, while claimant was intoxicated, he fell in a drunken stupor and laid on his right arm and shoulder in an unknown position for an unknown period of time. When he awoke, he was flaccid in his upper right extremity. He did not seek medical treatment for approximately 2 weeks and continued to drink. An MRI of the cervical spine showed some questionable cervical cord injury. An EMG in

12/2006 showed denervation in all groups tested in the upper right extremity. He reportedly had no improvement for 6 months. In 1/2007, he developed some movement in the shoulder, which progressively improved with time and use and therapy (page 47).

In 7/2007, heel, toe and tandem gait were normal except that he held his right arm in a flexed position at the elbow. His strength was 5/5 in the left upper extremity and both lower extremities. In the right upper extremity, his strength varied from 2/5 to 5-/5. On reflex testing, he had absent right triceps reflex, trace biceps and absent brachioradialis with 3+ knee jerks bilaterally and 2+ knee jerks in down going toes. Touch sensation was symmetric in the upper and lower extremities with no focal right upper extremity abnormalities. Pain was decreased in the radial nerve distribution predominately over the right deltoid, forearm and index finger and was relatively normal on the ulnar side of the arm (page 13).

On 8/29/2007, claimant had full strength in the biceps, deltoid, brachioradialis bilaterally and 4+/5 right triceps, 4/5 wrist extension, 2+/5 finger extensors, 3+/5 (inaudible), 4/4+/5 finger flexors with slightly greater strength in fourth and fifth fingers and (inaudible) at the triceps and brachioradialis, trace at biceps and decreased light touch and temperature perception throughout his right arm to the mid-biceps level. Vibration sensation was intact and pin prick was decreased throughout. EMG was abnormal (page 18).

ANALYSIS:

Claimant fell and injured his right arm in 6/2006. He was approved for benefits in 1/2007. The records indicated tat claimant started having improvement in 1/2007. While he has some weakness and changes in the right arm, the doctor was expecting continued improvement. He would be able to do at least light one-handed work.

* * *

(5) The following objective medical evidence was considered:

(a) A [REDACTED] Narrative Examination Report was reviewed.

* * *

Claimant and his wife informed me today that he continued to have some improvement in strength and movement of the right upper extremity for a number of months after his last visit here (September 5, 2007), although his sensation did not improve. In the past 2 months, he seems to be getting weaker, and he is having more pain in his neck and

shoulder. They told me that he is starting to get very depressed in November, so he began working part-time doing light janitorial work. They wondered whether this has been making things worse.

* * *

His neurological examination today was consistent with the previous diagnosis of a brachial plexus injury. His mental status was intact, with appropriate responses to questions and instructions. His cranial nerves were notable for reduced hearing in his left ear to finger noise and whisper. Otherwise, his cranial nerves were intact to detailed testing, with full visual field, equal and normally reactive pupils, no afferent capillary affect; full eye movements in all directions; no nystagmus; normal facial sensation and strength; and symmetric palate of the neck, and tongue movements. His gait and lower extremity coordination were intact to detailed testing, but his right upper extremity movements were slow and awkward. He had full strength throughout his left upper extremity and both lower extremities. He had reduced bulk throughout most muscles of the right upper extremity, but he had full strength at the right deltoid, biceps, and triceps.

* * *

He had moderate weakness of this extension, and more severe weakness of wrist flexion. He had moderate weakness of finger flexion and more severe weakness of finger extension. He had severe weakness of thumb adduction, on extension. His reflexes were reduced throughout the right upper extremity relative to the left.

* * *

In addition, he is reporting some symptoms that would suggest he may be developing complex regional pain syndrome from previously known as reflex sympathetic dystrophy.

* * *

As already mentioned, I think it is quite likely he will continue to have limitations in the strength and dexterity of his right hand. There is no evidence that he has improved in recent months.

* * *

(6) The objective medical evidence (claimant's testimony) shows that claimant attempted to work as a custodian at the [REDACTED], but was unable to continue that job because the left arm/wrist dysfunction he has been experiencing for over a year worsened when he tried to work.

CONCLUSIONS OF LAW

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).

ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY (SGA)

Under current MA-P policy, the **department has the burden of proof** to establish that claimant is now medically able to return to work. PEM 260.

Claimant's original approval was based on his upper left extremity dysfunction, including his left shoulder, his left arm and his left wrist and hand.

Claimant's left shoulder/arm/wrist/hand condition improved temporarily, but now is worsening. Claimant was able to work part-time as a janitor for several months. However, he noticed that as he continued to work the pain and nerve dysfunction in his right upper extremity started to increase.

Since claimant was originally approved due to his right upper extremity dysfunction (nerve damage), he continues to be eligible based on those diagnoses. In addition, claimant now has mental impairments (depression and mood disorder) which complicate his ability to work.

Therefore, claimant is not, at this time, able to return to substantial gainful activity based on the combination of his impairments (both non-exertional)-depression and mood disorder-and exertional (severe right upper extremity nerve dysfunction).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department has **NOT** established medical improvement, as required by PEM 260.

Accordingly, the department's decision to close claimant's MA-P is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: August 13, 2009

Date Mailed: August 13, 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/sd

cc:

