

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: 2008-26886
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 30, 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, in-person hearing was held in Flint on September 30, 2008. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED].

The department was represented by Shelia Wilson (FIS).

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 (December 12, 2007) who was denied by SHRT (August 26, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests Retro MA for September, October and November of 2007.

(2) Claimant vocational factors are: age—54; education—11th grade; post high school education—GED; work experience—fork lift operator, short-haul truck driver.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he worked as a fork lift operator.

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

- (a) Shortness of breath;
- (b) Dizziness;
- (c) Hypertension (HNT);
- (d) Inability to stand for long periods;
- (e) Fatigue.

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

OBJECTIVE MEDICAL EVIDENCE (August 26, 2008)

Consultative examination report of 3/20/2008 reported that claimant was 6 feet 4 inches tall and weighed 295 pounds for a BMI of 35.9. His physical exam was normal with the exception of decreased deep tendon reflexes (page 14).

Cardiology note of 11/20/2007 reported claimant to have no complaints of angina. Chest was clear, heart sounds were normal, and there was no edema present (page 43).

Hospital records of 9/2007 report claimant suffered a second heart attack and was treated with an angioplasty and stenting (page 72).

Hospital records of 5/2006 report claimant suffered his first heart attack and was treated with angioplasty and stenting (page 123).

ANALYSIS: Records indicate claimant was treated for a heart attack with angioplasty and stenting in 5/2006 and subsequently suffered another heart attack and underwent angioplasty stent placement in 9/2007. His condition would limit the ability to perform heavy lifting and frequenting stooping and crouching.

Medical opinion was considered in light of CFR 416.927.

The evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

(6) Claimant lives with his cousin, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, and grocery shopping. Claimant does not use a cane, a walker, a wheelchair, a shower stool or wear braces on his arms, legs or neck. Claimant was hospitalized in 2007 for 7 days to obtain treatment for a heart attack.

(7) Claimant has a valid driver's license and drives an automobile approximately four times a month. Claimant is not computer literate.

(8) The following medical/psychological records are persuasive:

(a) Claimants medical records are summarized by SHRT in paragraph #5, above.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not allege a mental impairment as the basis for disability. Also, claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant alleges that the sequelae for his two heart attacks cause fatigue and dizziness and he is unable to stand for long periods. The consultative internal medicine exam, dated March 20, 2008 states that claimant still gets some chest pain on and off and also complains of shortness of breath with activities. Claimant has had diabetes mellitus for 9-10 years but his sugar remains under control. The consultant internist provided the following assessment: coronary artery disease, status post angioplasty and stent placement; insulin dependent diabetes mellitus, hyperlipidemia, diabetic poly neuropathy. The physician does not report any work limitations. There is no New York Heart Classification in this record.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application; claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's basis for disability is summarized in the [REDACTED] hearing request as follows:

Claimant is a 53-year-old male who has a 12th grade education and a work history of truck driver. He has the following health conditions: myocardial infarction, PTCA, stents, the recurrence of the same problem three months later, procedures re-done, coronary artery disease, diabetes, hypertension, shortness of breath, vision problems, weakness and fatigue.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform medium work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The department thinks that the records provided by claimant show that he was treated for a heart attack with an angioplasty and stenting in 2006 and

subsequently suffered another heart attack and underwent the same procedure in 2007. The department thinks that claimant's heart dysfunction limits his ability to perform heavy lifting and frequent stooping and crouching.

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 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, or otherwise 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 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. 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 a combination of impairments which profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 criteria.

Since the severity/duration criteria is a *de minimus* standard, claimant meets the Step 2 disability test.

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 alleges disability based on Listing 9.08 and 4.01. He also alleges disability based on Med-Voc Rule 201.14.

The Administrative Law Judge concludes that claimant does not meet these Listings because the severity is not equivalent to the intent or the severity required by the Listing.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a fork lift driver. This was light work.

The consultative internal medicine report does not state that claimant is unable to work based on his heart dysfunction.

Therefore, claimant is able to return to his previous work as a fork lift operator. Claimant does not meet the Step 4 disability test.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work.

Claimant has the burden of proof to show by the medical/psychological evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on the sequelae of his two recent heart attacks. Claimant was treated successfully after each heart attack with an angioplasty.

During the hearing, claimant testified that he is unable to work due to shortness of breath, dizziness, hypertension and fatigue.

The Administrative Law Judge concludes that claimant's testimony about his fatigue/dizziness/shortness of breath is profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on the sequelae of his two heart attacks. Claimant currently performs many activities

of daily living and has an active social life with his live-in partner/cousin. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled sedentary work (SGA). In this capacity, he is able to work as a ticket taker at a theater, as a parking lot attendant, and as a greeter at [REDACTED].

Claimant's two recent heart attacks establish a presumption of disability for MA-P purposes. However, the consultative internal medicine exam (March 20, 2008) rebuts the presumption of MA-P disability.

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 MA-P is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: September 29, 2009

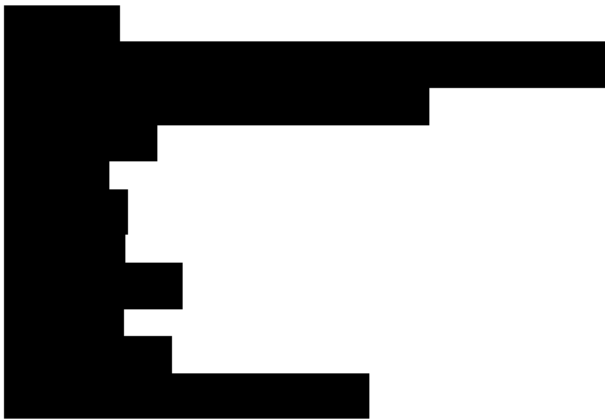
Date Mailed: September 30, 2009

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 receipt date of the rehearing decision.

JWS/vmc

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