

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: 2008-17338  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 3, 2008  
Schoolcraft 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 on July 3, 2008 in Manistique. Claimant personally appeared and testified under oath.

The department was represented by Maggie Rogers (ES).

Claimant requested additional time to submit new medical evidence of SHRT. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on July 3, 2008. Claimant waived the timeliness requirement 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-P/retro applicant (January 24, 2008) who was denied by SHRT (May 30, 2008), due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro-MA for October, November and December 2007.

(2) Claimant's vocational factors are: age—28; education—high school diploma; post-high school education—completed an apprenticeship program to become a journeyman plumber; work experience—journeyman plumber, plumber's apprentice and drug store stock boy.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he fractured his ankle in October 2007.

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

- (a) Chronic right ankle pain;
- (b) Status-post right ankle fracture (October 13, 2007);
- (c) Status-post right ankle surgery (October 13, 2007);
- (d) Status-post right ankle surgery (#2)(October 31, 2007);
- (e) Status-post right ankle surgery (#3)(April 2008).

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

**OBJECTIVE MEDICAL EVIDENCE (MAY 30, 2008):**

Claimant was treated in 9/2007 for drug dependence and depression (page 13).

In 10/2007, claimant fractured his right ankle (page 25). He underwent open reduction and internal fixation and external fixation of the fracture (page 35). About 2 weeks later he developed cellulites and was admitted for antibiotic treatment (page 45).

In 1/2008, claimant had tenderness over the mid-foot. Incisions were well healed. There was no focal tenderness. X-rays showed osteopenia diffusely through the foot. There was no grating or crepitus noted with passive range of motion. He was to weight bear as tolerated, with progressive strengthening and range of motion therapy (page 73A).

**ANALYSIS:**

Claimant fractured his right ankle and had open reduction, internal fixation and external fixation in 10/2007. In 1/2008, his external fixation had been removed and he was start weight bearing, as tolerated.

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(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, laundry and grocery shopping (needs help).

Claimant was treated at [REDACTED] for his right ankle fracture; he had 3 corrective surgeries. Claimant does not use a cane, walker, wheelchair or shower stool. He does wear a boot on his right foot.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) See the SHRT summary of medical evidence 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. There are no reports from a PhD psychologist or psychiatrist in the record. Claimant did not submit a DHS-49D or a DHS-49E to establish his residual functional mental capacity.

(10) The probative medical evidence of record does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work. Claimant does have the following diagnosis: Status-post three right ankle surgeries; tenderness over the mid-foot and status-post cellulites.

(11) Claimant's most prominent complaint is right ankle pain and inability to use the right ankle in normal fashion.

(12) Claimant has not applied for Social Security benefits.

#### CONCLUSIONS OF LAW

##### **CLAIMANT'S POSITION**

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

##### **DEPARTMENT'S POSITION**

The department thinks that claimant has normal Residual Functional Capacity (RFC) and is able to perform usual work activities.

The department thinks that the medical evidence of record shows claimant's right ankle condition is improving, or expected to improve within 12 months of the date of onset/surgery.

The department denied claimant's MA-P eligibility due to lack of duration and severity.

**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, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The 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. A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means that the severe impairment is expected to last for 12 continuous months or result in death.

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

The Administrative Law Judge agrees for the following reasons:

First, although claimant did have 3 surgeries to treat his right ankle fracture, the surgeries have been successful and claimant has few residual effects. Although claimant is unable to return to the same level of physical activity that was required of his work as a plumber, prior to his injury, he is able to perform an extensive list of activities of daily living.

Second, claimant reports that a fourth surgery on his right ankle has been recommended. However, it is expected that claimant's right ankle will continue to improve, and that claimant will regain, after a period of recuperation, full use of his right ankle.

Third, there is no evidence of a severe mental impairment on this record. Claimant did not allege a mental impairment as the basis for disability.

Therefore, claimant does not meet the Step 2 eligibility test.

**STEP 3**

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege that he meets any of the Listings.

Therefore, claimant does not meet the Step 3 disability test.

**STEP 4**

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a plumber. Claimant's work as a plumber may be defined as medium work. Medium work means:

**Medium work.** Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

The medical evidence of record establishes that at this time, claimant is not able to return to his previous work as a plumber. Claimant is not able to do the standing, lifting and carrying that is required of a plumber during his 8 hour shift.

Claimant does 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. 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 evidence of record establishes that claimant is able to perform unskilled/skilled sedentary work.

Based on the entire medical record, the Administrative Law Judge concludes that claimant would be able to work 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 application for MA-P. Claimant does not meet the Step 5 eligibility test.

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.

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 30, 2009

Date Mailed: August 31, 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/sd

cc:

