

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: 2008-25864
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 29, 2008
Monroe 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 Monroe on October 29, 2008. Claimant personally appeared and testified under oath.

The department was represented by Mark Homan (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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 a MA-P applicant (April 15, 2008) who was denied by SHRT (August 4, 2008) due to claimant's ability to perform normal work activities.

(2) Claimant vocational factors are: age—51; education—8th grade; post high school education—none; work experience—self employed scrap metal collector, welder at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when he was working as a self employed scrap metal collector/recycler.

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

- (a) Lung damage during welding accident (March 2008);
- (b) Difficulty breathing;
- (c) Bilateral carpal tunnel syndrome;
- (d) Deteriorating discs;
- (e) Joint pain.

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

OBJECTIVE MEDICAL EVIDENCE (August 4, 2008)

Claimant was admitted in 3/2008 due to adult respiratory distress, secondary to chemical pneumonitis about 48 hours after admission his symptoms began to improve until his discharge (page 13).

ANALYSIS: Claimant was admitted in 3/2008 due to adult respiratory distress, secondary to chemical pneumonitis. His condition improved with treatment.

(6) Claimant lives with his daughter, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning (sometimes), mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does wear an elastic back brace approximately 5 times a month. Claimant was admitted for in-patient hospital treatment (chemical pneumonitis) in March 2008.

(7) Claimant has a valid driver's license and drives an automobile approximately 15 times a month. He is not computer literate. Claimant is a highly skilled welder.

(8) The following medical records are persuasive:

(a) A [REDACTED] history and physical was reviewed.

The physician provided the following history:

Claimant is a pleasant 51-year-old Caucasian male who presented to [REDACTED] on [REDACTED] at [REDACTED], ambulatory from home with a chief complaint of worsening cough that is minimally productive of yellow sputum as well as shortness of breath for the past 3 days. Claimant is the uncle of [REDACTED] a patient who presented this day with similar complaints relating to the same precipitating event. This patient developed symptoms after working in a high school boiler room, approximately 3 days ago, with an acetylene torch to dismantle metal cabinetry. Claimant tells me that the shelving may have held batteries at one time. It had an unusual musty odor to it. He tells me another individual was hired approximately a month ago to dismantle the same cabinet unit, but stopped after removing the doors, and for reasons unknown, left his acetylene torch behind. He never returned. It is unknown whether he suffered any illness. The claimant states the area he worked in was confirmed, but well-ventilated with a fan. He states that there were pipes in the area which were covered with some kind of insulation that could have been asbestos.

Following tear-down of the shelving, claimant developed severe paroxysms of coughing, shortness of breath and night sweats that are drenching in nature. He also developed a headache in the occipital region. He has been bed-bound for the past three days, secondary to shortness of breath, fatigue and myalgias. He denies any recent exposure to solvents or cleaners.

(b) A [REDACTED] discharge summary was reviewed.

The physician provided the following diagnoses:

Reason for admission: chemical pneumonitis.

Additional diagnoses:

- (1) Adult respiratory distress syndrome, secondary to chemical pneumonitis;
- (2) Hypertension;
- (3) Steroid-induced hyperglycemia;
- (4) Steroid-related leukocytosis;
- (5) Prior history of tobacco use;
- (6) Questionable history of gastroesophageal reflux disease;
- (7) Degenerative disc disease of the lumbar spine;
- (8) Bilateral carpal tunnel syndrome.

The physician noted:

Claimant did have disability paperwork that was completed prior to discharge by myself.

(9) There is no probative psychological/psychiatric evidence of an acute (non-exertional) mental condition which would prevent claimant from performing all customary work functions. There are no probative psychiatric/psychological reports in the record. 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. The most recent medical information (March 28, 2008) from [REDACTED] states that claimant was successfully treated for chemical pneumonitis and released in stable condition. The [REDACTED] documents state that claimant did receive disability paperwork. However, the duration of claimant's disability is not mentioned in the [REDACTED] records.

(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 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 residual functional capacity to perform normal work activities.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The department denied claimant's MA-P application because claimant's recent impairment (chemical pneumonitis) was successfully treated and is expected to improve within 12 months from the date of onset (March 2008).

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 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, are not disabled regardless of medical condition, age, education or work experience.

20 CFR 416.920(b).

The 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.

Claimant must establish that he has an impairment which is expected to result in death, or has lasted or is expected to last for 12 months and during that time, will prevent all substantial gainful employment. 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).

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

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 disability test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a self employed scrap metal collector/welder. Claimant's previous work as a scrap collector/welder was medium/heavy work.

The medical evidence of record (the [REDACTED] discharge summary) suggests that claimant has a lingering disability related to the chemical pneumonitis which he was treated for in March 2008. Claimant's lingering chemical pneumonitis, precludes medium/heavy work, at this time.

Therefore, claimant meets 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 evidence of record, that his physical impairments (chemical pneumonitis), hypertension, and possible gastroesophageal reflux disease and degenerative disc disease of the lumbar spine totally preclude all substantial gainful activity. The most recent medical evidence from [REDACTED] ([REDACTED] [REDACTED]) show a lingering impairment secondary to chemical pneumonitis. This lingering impairment would prevent medium and heavy work. It does not prevent sedentary work.

During the hearing, claimant testified that a major impediment to his return to work was his back pain, secondary to his degenerative disc disease of the lumbar spine. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P purposes.

The Administrative Law Judge concludes that claimant's testimony about his lumbar pain 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 his combination of physical impairments, as discussed above. Claimant currently performs as extensive list of activities of daily living, has an active social life with his daughter with whom he lives, and drives an automobile 15 times a month. 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/light work (SGA). In this capacity, claimant is able to work as a ticket taker at a theater, as a parking lot attendant, or as a greeter for



Based on this analysis, the department correctly denied claimant's MA-P application, based on Step 5 of the sequential analysis, as presented above.

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: January 22, 2010

Date Mailed: January 25, 2010

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

cc:

