

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: 2008-7607
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2008
Wayne 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 Redford on March 11, 2008. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED] from [REDACTED].

The department was represented by Janice Floyd (ES).

The Administrative Law Judge appeared by telephone from Lansing. Claimant requested additional time to submit new medical evidence requested by SHRT. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on April 11, 2008. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, 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 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 (July 3, 2007) who was denied by SHRT (February 8, 2008) due to claimant's failure to submit sufficient evidence to make a disability ruling. Claimant requests retro MA for April, May and June 2007.

(2) Claimant's vocational factors are: [REDACTED]; post-high school education—two semesters at [REDACTED] (electronics major); work experience—senior machine operator and repair at [REDACTED], field services engineer at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since March 2007 when he was senior machine operator and repairman.

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

- (a) Blind in both eyes;
- (b) Bilateral leg dysfunction;
- (c) Status post second right toe amputation ([REDACTED]);
- (d) Both legs are inflamed and swollen.

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

OBJECTIVE MEDICAL EVIDENCE [REDACTED]:

In [REDACTED], claimant presented to the ER with an open diabetic ulcer on his right second toe. On exam, he was [REDACTED]. He was found to have osteomyelitis of the toe and underwent amputation of the toe. His history was significant for smoking two packs of cigarettes per day and drinking a pint of vodka daily for many years (pages 19-20, 24).

ANALYSIS:

Medical information in the file is insufficient to access claimant's current level of functioning.

RECOMMENDED DECISION:

Additional medical information is suggested to access the severity of claimant's impairment(s).

(6) Claimant lives with his brother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower seat. Claimant does not wear braces on his arms or legs.

(7) Claimant has a valid driver's license but is unable to drive due to his very poor eyesight. Claimant is highly computer literate, having worked with computers and robotic machinery on the job.

(8) The following medical records are persuasive:

(a) A [REDACTED] [REDACTED] History and Physical was reviewed.

The physician provided the following impression:

Diabetic foot infection with osteomyelitis, diabetes, hypertension, non-compliance, obesity, alcohol abuse and history of depression.

The physician provided the following history: Claimant is a 47-year-old white male known to me from previous medical admissions. He came in with a several week history of an open sore on the second toe of the right foot. He was supposed to follow-up with a podiatrist approximately one and one-half weeks prior to admission, but did not do so.

- (b) A [REDACTED] [REDACTED] Consultation was reviewed.

The consulting physician provided the following history:

Claimant is a [REDACTED] with a past history of diabetes, hypertension, depression and alcohol abuse, who is admitted to the hospital with an infected right second toe. Apparently, the patient was here previously. There are no dictations on the computer, but per radiology, there were x-rays taken on [REDACTED]. At that time, there was no definite osseous involvement of the right second toe. Claimant was supposed to follow-up with [REDACTED]. Apparently, never followed-up and was to follow-up in two days of which he made an appointment and was unable to make it there because he came to the hospital. At this time, the patient is seen at bedside. He relates that a small ulcer developed on the toe about a month ago, eventually worsened and started draining. In the past week or so, the toe became very necrotic, so he eventually came in. At this time, he denies nausea, vomiting, chills or fever. No chest pain or shortness of breath.

Assessment and Plan: Gangrene with osteomyelitis, right second digit. Radiographically, there is some osteolysis of the head of the proximal phalanx as compared to our prior study with collapse of the base of the proximal phalanx.

- (9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. There are no evidence in the record that claimant has

recently been evaluated by a PhD psychologist or psychiatrist. Claimant did not supply a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) condition expected to prevent claimant from performing all customary work functions. The medical records do show the following conditions: Status post second toe amputation (2007), diabetic foot infection with osteomyelitis, diabetes, hypertension, non-compliance, obesity, alcohol abuse and history of depression.

(11) Claimant's primary complaints are blindness in both eyes.

(12) Claimant has applied for disability benefits with the Social Security Administration. His application was recently denied. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

Claimant thinks he is entitled to MA-P based on the impairments listed in paragraph #4, above. Claimant also requests retro MA for April, May and June 2007.

DEPARTMENT'S POSITION

The department thinks that the medical information supplied by claimant is insufficient to access his current level of functioning.

SHRT recommended that claimant obtain a complete physical examination with a licensed internist to obtain detailed information on his current medical status.

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...[The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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 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.

Claimant's 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 meets 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 twelve months from the date of application. 20 CFR 416.909.

Also, to qualify for MA-P, claimant must satisfy both the gainful work and the severity/duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit his physical and/or mental ability to do basic work activities, he does not meet the Step 2 criteria. 20 CFR 416.920(c).

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

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 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 machinist and repairman at a robotics factory.

Since claimant has very poor eyesight, he is not able to return to his work as a machinist and machine repairman.

Since claimant is not able to return to his most recent work as a machinist/repairman in a robotic factory, he 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 *Dictionary of Occupational Titles*, published by the U.S. Department of Labor at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. This means that claimant is able to work as ticker taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

During the hearing, claimant testified that the major impediment to his return to work was his very poor eyesight. Claimant's ability to work is also compromised by his ongoing leg dysfunction (swelling and pain). The Administrative Law Judge concludes that claimant's testimony about his pain and eye dysfunction is 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 diabetic leg dysfunction and his bilateral eye dysfunction. Claimant currently performs numerous activities of daily living, and is able to use a computer in a very marginal way. 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 describer above.

Accordingly, the department's denial of claimant MA-P application is, hereby, **AFFIRMED**. The Administrative Law Judge strongly recommends that the department refer claimant to Michigan Rehabilitation Services for an assessment and assistance if appropriate.

SO ORDERED.

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

Date Signed: February 18, 2009

Date Mailed: February 18, 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:

