

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: 2009-17007
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 3, 2009
Mason 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, an in-person hearing was held on September 3, 2009, in Ludington, MI. Claimant personally appeared and testified under oath.

The department was represented by Jane Hedberg (FIM) and Dave Carlson (ES).

ISSUES

(1) Did the department provide probative psychiatric evidence to show marked improvement in claimant's medical condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

(2) Did the department provide probative medical evidence to show marked improvement in claimant's physical condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

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 who had an eligibility review on October 7, 2008.

(2) On January 28, 2009, MRT denied ongoing MA-P benefits because claimant retains the capacity to perform unskilled work.

(3) On February 4, 2009, the local office notified claimant that MRT had denied ongoing MA-P benefits.

(4) On February 12, 2009, claimant filed a timely hearing request. The local office suspended the proposed closure of claimant's MA-P pending the results of this hearing.

(5) Claimant's vocational factors are: age--56; education--high school diploma; post high school education--service in the [REDACTED] as a combat engineer; work experience--farmer, machinist, framer in home construction.

(6) Claimant has not performed substantial gainful activity since 1984 when he worked as a carpenter/remodeler for a home contractor.

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

- (a) Chronic neck pain;
- (b) Sleep deprivation;
- (c) Nobody wants to be around me;
- (d) Forgetfulness;
- (e) Hand numbness;
- (f) Muscle spasms.

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

OBJECTIVE MEDICAL EVIDENCE (April 15, 2009)

SHRT decided that claimant is able to perform unskilled light/medium work. SHRT reviewed claimant's impairments using SSI Listings 1.01, 4.01, and 3.01.

SHRT denied ongoing MA-P based on Vocational Rules 203.13 and 202.13.

- (9) Claimant lives with his spouse and performs the following activities of Daily Living (ADLs): dressing, bathing (needs help), cooking (sometimes), dishwashing (sometimes), and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant wears a neck brace on a daily basis. Claimant was not hospitalized for inpatient treatment in 2008 or 2009.

- (10) Claimant does not have a valid driver's license. It is not known whether claimant is computer literate.

- (11) The following medical records are persuasive:

- (a) A December 23, 2008 consultant physical examination report was reviewed.

The consultant provided the following background:

Claimant is a 55-year old Caucasian male who presents to the [REDACTED] today filing for an attempt at renewing his Medicaid insurance and financial assistance through the Mason County DHS.

* * *

He registers the following chief complaint:

- (1) Neck pain with headache and radiation of the pain into my arms and legs at times. He states that his symptoms began around 1982, when he and some other guys were removing a purple martin birdhouse from some type of telephone pole that fell over and hit him on the head. He evidently has two

bulging and two herniated discs between the C2-C6 areas, surgery has never been undertaken.

* * *

The consulting physician provided the following impressions:

Given a lack of any neurologic deficit, the current medications that he is on should cover any neck pain that he alleges. Should he be motivated to seek employment, he should be restricted to floor level activities on his current medications. I would suggest he not repeatedly turn the neck sideways or upward, lift only rarely from below the knees and limit that to 40 pounds. He can lift 50 pounds from the knees to the chest and probably lift 40 pounds overhead. He should stay in the low to low/moderate levels of exertions secondary to his respiratory and physically deconditioned status, which is compounded from smoking and his abdominal obesity. Aside from this, he appears to be able to function within these parameters.

- (b) An October 6, 2008 family physician report was reviewed.

The family physician provided the following history:

He has a history of hypogonadism and metabolic syndrome. He comes in for a refill.

The family physician provided the following assessment:

Hypogonadism plan testosterone shots.

The family physician also reports the following impairments during the previous 12 months.

NOTE: The family physician also reports the following impairments during the past 12 months: Type II Diabetes, hypertension, obesity, asthma, shortness of breath, chest discomfort, hypogonadism, COPD, sleep apnea, mood disorder, chronic neck pain, Hyperlipidemia, chronic pain syndrome, chronic fatigue, metabolic syndrome, leg ulcers, chronic stasis dermatitis.

- (c) A September 25, 2008 family physician echocardiogram report was reviewed. The family physician provided the following impression: Mild aortic sclerosis; mild physiological tricuspid regurgitation; ejection fraction of 57%; enlarged left atrium; evidence of diastolic dysfunction.

(12) There are no psychiatric reports in the record. Claimant alleges disability based on: “Nobody wants to be around me” and forgetfulness. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(13) The probative medical evidence establishes numerous acute (exertional) physical impairments expected to prevent claimant from performing all customary work functions for the required period of time. Claimant’s physician, during the past 12 months, provided the following diagnoses: Type II Diabetes, hypertension, obesity, and asthma, shortness of breath, chest discomfort, hypogonadism, COPD, sleep apnea, mood disorder, chronic neck pain, Hyperlipidemia, chronic pain syndrome, chronic fatigue, metabolic syndrome, leg ulcers and chronic stasis dermatitis. The current medical records establish that claimant’s physical condition has not improved to the point where he is able to perform substantial gainful activity (SGA).

(14) Claimant has previously received federal disability benefits (SSI) from the Social Security Administration. However, he is currently not receiving any benefits from Social Security.

CONCLUSIONS OF LAW

CLAIMANT’S POSITION

Claimant thinks he is entitled to a continuation of his MA-P benefits based on the impairments listed in Paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled light and medium work. The department relied on Med-Voc Rules 203.13 and 202.13, as a guide.

NOTE: SHRT did not review claimant's MA-P eligibility using the applicable SSI improvement rules. Also, the department did not obtain a current psychiatric report to determine claimant's mental residual functional capacity.

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 does 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).

To determine to what degree a mental impairment limits claimant's ability to work, the following regulations must be considered.

(a) Activities of Daily Living.

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) Social Functioning

...**Social functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) Concentration, Persistence or Pace.

...**Concentration, persistence or pace** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

(d) Sufficient Evidence:

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical

evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) Chronic Mental Impairments:

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

The department has the burden of proof to show by a preponderance of the medical evidence in the record that claimant's mental/physical impairments have improved to the extent claimant is now able to perform substantial gainful activity. PEM 261. "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 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(c).

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 the department has established improvement in claimant's mental/physical impairments to the degree that he is now able to perform Substantial Gainful Activity. **The department has the burden of proof** to show that claimant's mental/physical impairments have substantially improved to the point where claimant is now able to perform basic work activities.

MENTAL IMPAIRMENTS

Claimant alleges forgetfulness and inability to socialize. Claimant's family physician reports mood disorder. The department has not provided a DHS-49D or DHS-49E to establish that claimant's mental status has improved to the point that claimant is now able to perform SGA. Given claimant's documented mental impairments, he is currently unable to perform Substantial Gainful Activities.

In short, the department has not shown, with recent psychiatric evidence, that claimant's mental impairments have improved to the point that claimant is now able to perform Substantial Gainful Activity.

PHYSICAL IMPAIRMENTS

The medical evidence of record establishes that claimant has the following physical impairments: Type II Diabetes, hypertension, obesity, and asthma, shortness of breath, chest discomfort, hypogonadism, COPD, sleep apnea, mood disorder, chronic neck pain, Hyperlipidemia, chronic pain syndrome, chronic fatigue, metabolic syndrome, leg ulcers and chronic stasis dermatitis.

The medical record establishes that claimant has a combination of ongoing physical impairments, which have **not** substantially improved in the past 12 months and, still prevent substantial gainful employment.

At this time, claimant's combination of impairments preclude him from performing SGA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established marked improvement in claimant's mental and physical impairments to the extent that he is now able to perform SGA. PEM 261.

Accordingly, the department's denial of claimant's request for ongoing MA-P is, hereby, REVERSED.

The department will provide claimant with a new physical and psychiatric examination pursuant to an ongoing review of his MA-P eligibility on or before September 1, 2010.

SO ORDERED.

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

Date Signed: April 19, 2010

Date Mailed: April 20, 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.

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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/tg

cc:

