

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: 2009-20940  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 12, 2009  
Kalkaska 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 Kalkaska on August 12, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED], [REDACTED] did not appear for the August 12, 2009 telephone hearing.

The department was represented by Rodger Wagner (ES).

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 an MA-P/Retro applicant (February 17, 2009) who was denied by SHRT (May 12, 2009) based on claimant's failure to establish an impairment which 20 CFR 416.909. Claimant requests Retro-MA for December 2008 and January-February 2009.

(2) Claimant's vocational factors are: age—52; education—high school diploma, post-high school education—none; work experience—was a customer service representative at a [REDACTED], a stocker at [REDACTED] and a [REDACTED] at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since May 2009, when he was a customer service representative for a [REDACTED].

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

- (a) Back dysfunction;
- (b) Status post surgery on his tongue;
- (c) Speech problems;
- (d) Hypertension;
- (e) Heart disease.

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

**OBJECTIVE MEDICAL EVIDENCE (MAY 12, 2009)**

The department thinks that claimant's combined impairments (heart disease and tongue cancer) do not prevent claimant from performing normal work activities. The department evaluated claimant's impairments using SSI Listings 4.01 and 13.01.

(6) Claimant lives with his wife and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming,

laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant was hospitalized in 2008 to receive treatment for tongue and jaw cancer. Claimant was not hospitalized in 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately 15 times a month. Claimant is computer literate.

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

- (a) A March 4, 2009 Medical Examination Report (DHS-49) was reviewed. The family practice physician provided the following diagnoses: Cancer of the tongue, hypertension and atherosclerosis.

The family practice physician provided the following work limitations:

Claimant is able to lift less than 10 pounds frequently; he may lift up to 20 pounds occasionally. He is able to stand/walk less than 2 hours in an 8 day. He is able to sit less than 6 hours in an 8 hour day. Claimant is able to use his hands/arms for simple grasping, reaching and pushing-pulling. He is unable to use his hands/arms for fine manipulating. Claimant has normal use of his legs.

- (b) A [REDACTED] narrative report was reviewed.

The surgeon reports that claimant had a wide local excision of a floor of the mouth lesion in December 2008.

The physician reports that claimant's healing was within normal limits and that claimant is experiencing normal post operative results.

(9) Claimant does not allege a mental impairment as the basis for a 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. The family physician provided the following diagnosis: Cancer of the tongue, hypertension and atherosclerosis. The family physician did not report that claimant is totally unable to work. The medical records do not establish any severe functional limitations arising out of his physical impairments.

(11) Claimant recently applied for federal disability benefits (SSI) 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 benefits based on the impairments listed in paragraph #4, above.

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

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled sedentary work.

The department denied MA-P benefits based on 20 CFR 416.909 due to lack of severity and duration.

##### **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).

A statement by a medical source that an individual is “disabled” or “unable to work” does not mean that disability exists for the purpose of the program. 20 CFR 416.927(e).

**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 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 existed 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 gainful work and the duration criteria. 20 CFR 416.90(a)

If claimant does not have an impairment or combination of impairments that profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 criteria.

Under the *de minimus* rule, claimant meets the severity and duration requirements.

However, in order to qualify for MA-P disability, claimant must establish an impairment which clearly prevents all normal work activities.

### **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.

SHRT evaluated claimant's eligibility using the Listings. Claimant does not meet any of the applicable SSI Listings.

### **STEP 4**

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a customer service representative for a [REDACTED].

Claimant's work at the [REDACTED] was sedentary/light work.

Claimant alleges disability based on heart disease and tongue cancer. However, the March 4, 2009 Medical Examination Report (DHS-49) does not state that claimant is totally unable to work. The claimant's physician reports that he is able to lift up to 20 pounds occasionally, can stand/walk less than 2 hours in an 8 day and can sit less than 6 hours in an 8 hour day. The family physician also reports that claimant has difficulty with fine manipulating,

but has normal use of his legs. The family physician did not state that claimant is totally unable to work.

Therefore, claimant has not met his burden of proof to establish that he is totally unable to return to his previous work as a customer service representative at a parts store.

### **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 disorder.

Second, claimant alleges disability based on heart dysfunction and cancer of the tongue. The medical evidence supplied by the family physician and by the surgeon from the [REDACTED] does not show that claimant's impairments severely limit claimant's ability to function to the degree that claimant is totally unable to work.

Claimant currently performs an extensive list of activities of daily living, has an active social life with his spouse, drives an automobile and is computer literate. 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 physically 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 MA-P application, under 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: April 15, 2010

Date Mailed: April 16, 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/sd

cc:

