

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: 2009-20942
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 12, 2009
Clare 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 November 12, 2009 in Harrison. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Sarah Conklin (ES).

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 (October 31, 2008) who was denied by SHRT (May 14, 2009) due to claimant's ability to perform light work. The department relied on Med-Voc Rule 202.10 as a guide. Claimant requests retro MA for July 2008.

(2) Claimant's vocational factors are: age--50; education--8th grade; post high school education--none; work experience--semi-truck driver and self-employed dairy farmer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he was a semi truck driver hauling crushed cars.

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

- (a) Heart dysfunction;
- (b) Obesity;
- (c) Back/neck/leg dysfunction; and
- (d) Left leg pain.

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

OBJECTIVE MEDICAL EVIDENCE (May 14, 2009)

The claimant was admitted in 7/2008 due to chest pain. His cardiac enzymes were all normal. His EKG did not show any signs of acute disease (page 272).

In 9/2008, claimant was 5'10" and 352.4 pounds. Mood and affect were grossly appropriate. Strength was 5/5 in all four extremities except for 4/5 handgrips. Reflexes were traced to one positive. Sensation was intact. Gait was stable. He had decreased range of motion of the lumbar spine (page 247).

A DHS-49 form showed the claimant's current diagnoses included hypertension, obesity and chronic severe neck and back pain. He was 359 pounds. He had an antalgic gait, decreased range of motion of the left shoulder and left elbow and parasthesia of the left upper extremity (page 293). He was given less than sedentary limitations (page 292).

ANALYSIS:

Claimant was admitted in 7/2008 for chest pain, but a myocardial infarction was ruled out. On a functional capacity form for heart disease, the claimant was given a Class II and Class C therapeutic classification. However, the claimant does not actually have a diagnosis of heart disease other than hypertension. He is over 350 pounds and has chronic pain. He is able to ambulate without assistance (sic). His hand grip was mildly reduced. The claimant's treating physician has given less than sedentary work restrictions, based on the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927(d), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing light work.

* * *

(6) Claimant is 50 years old and lives with his wife. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, light cleaning and grocery shopping (sometimes). Claimant uses a cane on a daily basis to assist him with ambulating. He does not use a walker, wheelchair, or shower stool. He wears a brace on his left arm on a daily basis. Claimant was hospitalized in 2008 for a heart attack; he was hospitalized in 2009. He had injuries sustain in a tractor accident.

(7) Claimant has a valid driver's license and drives an automobile approximately eight times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) A March 12, 2009 Medical Examination Report (DHS-49) was reviewed. The family physician provided the following diagnoses: heart problems, hypertension, obesity, chronic severe neck and back pain.

The physician states that claimant is able to lift less than ten pounds frequently and ten pounds occasionally. He is able to stand/walk less than two hours in an eight-hour day.

He is able to sit within six hours of an eight-hour day. He is able to use his right arm for normal grasping, reaching, pushing-pulling and fine manipulation. He is unable to use his left arm for normal work functions. Claimant has normal use of his leg.

- (b) A March 12, 2009 Classification of claimants with diseases of the heart (FIA-1138) was reviewed.

The family physician provided the following assessment of claimant's functional capacity:

Patient's with cardiac disease resulting in marked limitation of physical activity. They are comfortable at rest. Less than ordinary exertion causes fatigue and palpitation, dyspnea or anginal pain.

The family physician provided the following therapeutic Classification:

Class C: Patients with cardiac disease whose ordinary physical activities should be moderately restricted and who's more strenuous effort should be discontinued.

* * *

- (9) Claimant does not allege disability based on a severe mental impairment.

Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's family physician reports the following diagnoses:

(1) Cardiac disease resulting in marked limitations of physical activity. Claimant is comfortable at rest. Less than ordinary activity causes fatigue, palpitation, dyspnea or anginal pain;

(2) Hypertension; (3) HLD; (4) Obesity; (5) Chronic severe neck and back pain.

(11) **In 2009, the Social Security Administration approved claimant for RSDI benefits, with a disability onset date of December 26, 2008.** The Social Security action was apparently based on claimant's combination of impairments, but focuses significantly on by claimant's cardiac disease and resulting marked limitations for physical activity.

CONCLUSIONS OF LAW

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).

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/retro 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the MA-P disability requirements (PEM 260) for the retro month of July 2008.

The Administrative Law Judge relies heavily on the RSDI approval recently made by Social Security using a disability onset date of December 2008. Since claimant was hospitalized for a heart attack in July 2008, claimant's MA-P onset date is July 2008.

Based on the medical evidence of record, claimant has a lifetime disability (due to his cardiac disease), and Social Security has approved him for RSDI disability back to January 2008, claimant's cardiac impairment clearly existed, in a severe configuration in July of 2008.

Accordingly, the department's denial of claimant's MA application for July 2008, is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: May 7, 2010

Date Mailed: May 7, 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 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

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cc:

