

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: 2009-21122
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
Kalamazoo 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 July 1, 2009 in Kalamazoo. Claimant did not appear. Claimant was represented by

[REDACTED].

The department was represented by Katherine Schindlbeck (FIS).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on July 1, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the 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) or 90 days (SDA)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P) or 90 days (SDA)?

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/SDA applicant (August 15, 2008) who was denied by SHRT (May 18, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.13 as a guide. Claimant requests retro MA for July 2008.

(2) Claimant's vocational factors are: age—53; education—high school diploma; post high school education one year of college and trade school; work experience—self employed business owner/painter.

(3) Claimant has not performed substantial gainful activity (SGA) since 1998, when he worked as a self-employed owner/operator and painter.

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

- (a) Right lower extremity cellulitis;
- (b) Coronary artery disease;
- (c) History of myocardial infarction with stenting;
- (d) Hypertension;
- (e) Dyslipidemia;
- (f) Gout;
- (g) Chronic chest pain;
- (h) Limited range of motion;
- (i) Dizziness;
- (j) Generalized fatigue.

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

OBJECTIVE MEDICAL EVIDENCE (May 19, 2009):

SHRT decided claimant was able to perform light unskilled work. SHRT evaluated claimant's disability using SSI Listing 4.01.

SHRT decided claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on Med-Voc Rule 202.13.

- (6) Claimant lives with his spouse. Claimant's activities of daily living are unknown.

Claimant uses a walking stick. Claimant was hospitalized twice in 2008 for coronary artery disease, chest pain and angina. He was hospitalized once in 2009 for sleep apnea, coronary artery disease and revascularization and hypertension.

(7) It is not known whether claimant has a valid driver's license. It is not known whether claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) A [REDACTED] was reviewed.

The physician provided the following assessment:

- (1) Coronary artery disease, status post percutaneous revascularization;
- (2) Low-normal left ventricular systolic function;
- (3) Hypertension;
- (4) Hyperlipidemia;
- (5) History of acute kidney injury, now resolved and stable;
- (6) Obesity and probable obstructive sleep apnea.
- (7) Benign prostatic hypertrophy;
- (8) Medical noncompliance.

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

The cardiologist provided the following current diagnoses:

- (1) Hyperlipidemia;
- (2) Hypertension—essential benign;
- (3) MI-S/P unspecified;
- (4) CAD of native coronary artery;
- (5) Obstructive sleep apnea syndrome;
- (6) Murmurs;
- (7) Chest tightness/pressure;
- (8) Abnormal adenostine nuclear study;

(9) Family history of cardiovascular disease.

The cardiologist did not specifically state that claimant was unable to work.

(9) Claimant does not allege disability based on the mental impairment. Claimant did not submit any clinical psychological studies. The claimant did not submit a DHS-49D or DHS-49E.

(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. Claimant did not testify at the hearing. The medical records establish significant coronary artery disease and recent heart surgery. The cardiologist did not state that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied claimant's SSI application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA based on the impairments listed Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform a wide range of unskilled light work. The department evaluated claimant's impairments using SSI Listing 4.01. Claimant does not meet any of the applicable SSI Listings.

The department denied benefits based on claimant's ability to perform light work and Vocational Rule 202.13, as a guide.

LEGAL BASIS

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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 mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/SDA 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 disabled for MA-P/SDA purposes.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working, or otherwise substantial gainful activity (SGA), 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 an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all basic work activities. 20 CFR 416.909.

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

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

STEP #3

The issue at Step 3 is whether the 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 owner/operator painter. This was medium work.

Claimant's work as a painter required him to stand for an entire shift, to climb ladders and to carry heavy objects.

Because of claimant's recent cardiac hospitalizations/treatments, he is no longer able to perform the medium/heavy work required which his previous work as a painter required.

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 a preponderance of the medical evidence in the record that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant does not allege disability based on a mental impairment. He did not submit any clinical psychological reports to establish his severe mental impairment. He did not submit a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on his lower extremity cellulitis, coronary artery disease, history of myocardial infarction with stenting and hypertension. He also complains of chest pain, limited range of motion and dizziness. The recent cardiologist report (January 21, 2009) provides a diagnoses of hyperlipidemia, hypertension (benign), S/P myocardial infarction and coronary artery disease. The cardiologist did not clearly state that claimant is totally unable to work.

Third, claimant thinks that he is unable to return to work due to chest pain, dizziness, and cellulitis. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

Claimant's activities of daily living are not known because he did not testify at the hearing. However, considering the entire medical record, it appears that claimant has been successfully treated for his cardiac-related problems.

The Administrative Law Judge concludes that claimant was able to perform simple unskilled sedentary work (SGA). In this capacity, he is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would afford claimant a sit/stand option.

Based on this analysis, the department correctly denied claimant's MA-P/SDA 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/SDA disability requirements under PEM 260/261.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: October 26, 2009

Date Mailed: October 27, 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/tg

cc:

