

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: 2009-25109
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 1, 2009
Eaton 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 in Charlotte on October 1, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

Claimant requested additional time to submit new medical evidence requested by SHRT. The new medical evidence was submitted to the State Hearing Review Team (SHRT) on October 8, 2009.

Claimant waived the timeliness requirements so 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 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 (January 15, 2009) who was denied by SHRT (June 15, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant request retro MA for October, November and December 2008.

(2) Claimant's vocational factors are: age--47; education—11th grade, post-high school education--GED; work experience—maintenance man (floors and windows) for [REDACTED], line worker for a plastic company in [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008, when he was a maintenance man (floors and windows) for [REDACTED].

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

- (a) Chronic blood clot condition in both legs;
- (b) Blind in right eye;
- (c) Chronic leg claudication;
- (d) Daily headaches;
- (e) Sleep dysfunction;
- (f) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (June 15, 2009)

The department thinks that claimant's combined impairments (peripheral arterial disease and blindness of the right eye) do not prevent claimant from performing unskilled light work.

(6) Claimant lives with his sister and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing (sometimes), light cleaning, laundry and grocery shopping (needs help). Claimant uses a cane approximately 30 days a month. He does not use a walker, a wheelchair or a shower stool. He does not wear braces. Claimant received inpatient hospitalization for blood clots in his legs on three occasions in 2008. In 2009, he was hospitalized four times for blood clots in his right leg.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) An [REDACTED] discharge summary was reviewed. The physician provided the following discharge diagnoses:

- (1) Right lower extremity acute ischemia, status-post catheterization with right lower extremity femoral thrombolysis;
- (2) History of deep vein thrombosis (DVTs);
- (3) Hypertension;
- (4) Coronary artery disease;
- (5) Diabetes.

The examining physician advised claimant to avoid driving and avoid lifting until his treating physician and treating specialist give him the okay.

(b) A [REDACTED] physical examination report was reviewed. The physiatrist provided the following background:

Claimant is a 47-year-old Caucasian American male who presents for FIA evaluation.

This gentleman has a long history of femoral artery clotting. He has undergone bilateral femoral artery grafting roughly in February of 2008 and has had angioplasties x3 for recurrence of blood clots, the last in December of 2008. He is on both Plavix and Coumadin. * * *

He sees [REDACTED] roughly on a monthly basis. He has chronic pain in both legs, the right leg greater than the leg. He is only

taking Tylenol for discomfort. He advises when he has a recurrence of a clot, his leg gets swollen and the pain becomes excruciating as opposed to the low pain level which he has on a regular basis. The patient was able to quit smoking roughly six weeks ago. He has the occasional cigar. He has a longstanding history of peripheral vascular disease and stated previously, has a Fempop bypass with only fair results. He can walk less than ½ a block before he starts having claudication issues and chronic pain.

Additionally, claimant describes daily headaches on the 'top of his head.' He treats them with Tylenol. He does not recall having a workup relative to this issue. He has no light sensitivity, nausea, vomiting or acute vision changes as a result of the headaches.

Claimant has ongoing depression, which he relates to chronic pain issues, which are not being addressed at this time.

OCCUPATIONAL HISTORY:

Claimant was a maintenance man at [REDACTED] through October 2008; he left after four years because he could not stand being on his feet and pain complaints.

SOCIAL HISTORY:

* * *

Claimant has some difficulty reading and writing. He has at least a 15 past-year history of smoking and quit cigarettes six weeks ago and still uses cigars. He rarely uses alcohol and does not use recreational drugs. He has not driven in 8 years, advising his vision is not good enough for that.

* * *

The psychiatrist provided the following assessment:

Severe peripheral vascular disease. Claimant is status-post femoropopliteal bypass and has had at least three angioplasties, secondary to recurrence of femoral artery clots. He has significant claudication. He has chronic pain.

Unfortunately, while he has decreased his smoking, he continues to use cigars periodically. He last used cigarettes six weeks ago.

Claimant has chronic headaches, which he described as pressure on the top of his head which is somewhat

ameliorated with Tylenol. He advises this has not been worked up.

He is also depressed and would benefit from a psychological assessment and assistance in terms of pain management.

* * *

- (9) Claimant thinks he is entitled to MA-P based on a mental impairment: depression.

There is no clinical evidence in the record from a psychiatrist or a Ph.D. psychologist. The

██████████ psychiatrist reported that claimant is depressed, but did not provide particulars.

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

(11) Claimant thinks that he is eligible for MA-P based on a combination of physical impairments: (a) chronic blood clots in both legs; (b) blindness in right eye; (c) chronic leg claudication; (d) daily headaches; (e) sleep dysfunction. 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. The psychiatrist report (March 20, 2009) contains the following statement: severe peripheral vascular disease with at least three angioplasties secondary to recurrence of femoral artery clots. Significant claudication, with chronic pain. Claimant is also depressed.

- (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's position is summarized by ██████████ as follows:

Claimant was hospitalized in October-November 2008 for occlusion of femoropopliteal bypass grafts. Claimant underwent thrombolytic therapy per Interventional Radiology. Client was readmitted for arterial occlusion of the right femoral/popliteal bypass graft status-post lysis, severe bilateral LE PVD. Claimant

was readmitted in 4/2009 for lower extremity acute ischemia status-post catheterization with right lower extremity femoral thrombolysis and femoral-popliteal graft placement. Claimant has a history of hypertension, deep vein thromboses, coronary artery disease, and diabetes. He suffers from significant claudication, chronic back pain, migraines and depression.

* * *

DEPARTMENT'S POSITION

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

The department denied MA-P benefits based on Med-Voc Rule 202.20.

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 (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for the purposes of the MA-P 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. PE. “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 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. Unless an impairment is expected to result in death, it must have existed, or be expected to exist, for a continuous period of at least 12 months. 20 CFR 416.909.

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

Claimant has been receiving surgical treatment for his bilateral blood clots since February 2008 and he has had angioplasties x3 for recurrence of blood clots. The last procedure was in December 2008. The surgical treatments have been only temporarily successful. He continues to have significant claudication and has symptoms which suggest that he will need more surgeries on his legs for his blood clots in the future. A consulting physiatrist from Sparrow reports that claimant has severe peripheral vascular disease. He is status-post femoropopliteal bypass and has had at least three angioplasties secondary to the recurrence of femoral artery clots. In addition, he has significant claudication and has chronic pain.

Based on the assessment of the consulting psychiatrist at [REDACTED], claimant is unable to perform any substantial gainful activity and is unlikely to be able to do substantial gainful activity in the future.

Therefore, based on the assessment of the specialist at [REDACTED], claimant is disabled for MA-P purposes effective October 2008.

Based on this analysis, the department incorrectly 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 meets the MA-P disability requirements under PEM 260.

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

SO ORDERED.

The department will provide claimant with a follow-up medical examination for purposes of determining ongoing MA-P eligibility on or before September 30, 2010.

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

Date Signed: March 5, 2010

Date Mailed: March 8, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/tg

cc:

