

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: 2009-34641
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 8, 2009
Calhoun 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 on October 8, 2009, in Battle Creek. Claimant personally appeared and testified under oath.

The department was represented by Karen Sootsman (FIM) and Tammy Smith (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 (May 14, 2009) who was denied by SHRT (September 16, 2009) based on claimant's ability to perform normal work activities. Claimant requests retro MA for April 2009.

(2) Claimant's vocational factors are: age—45; education—high school diploma; post high school education—took coursework in tool and die fabrication at [REDACTED], certified lathe operator; work experience—machine set-up and lathe operator.

(3) Claimant has not performing Substantial Gainful Activity (SGA) since November 2008 when he was a machine set-up technician and lathe operator.

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

- (a) Pancreatitis;
- (b) Arthritis of the neck;
- (c) Right hip dysfunction;
- (d) Right hip replacement recommended;

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

SHRT decided that claimant is able to perform normal work activities under 20 CFR 416.909. SHRT evaluated claimant's impairments using SSI Listings 1.01, 5.01 and 12.01. SHRT decided that claimant does not meet any of the applicable SSI Listings.

* * *

(6) Claimant lives alone 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, walker, wheelchair, or a shower stool. Claimant does wear a neck brace approximately four times a month. He also wears a left knee brace as needed. Claimant was not hospitalized in 2008. He was hospitalized twice in 2009 for stomach dysfunction.

* * *

(7) Claimant has a valid driver's license and drives an automobile approximately 19 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(A) A [REDACTED] discharge summary was reviewed.

The physician provided the following final diagnoses:

- (a) Acute confusion;
- (b) Ingestion of multiple drugs with toxicity;
- (c) Uncontrolled hypertension;
- (d) Osteoarthritis;
- (e) Alcohol intoxication;
- (f) Drug abuse;
- (g) History of chronic pancreatitis, osteoarthritis and gastroesophageal reflux.

(B) A [REDACTED] history and physical was reviewed.

The physician provided the following background:

CHIEF COMPLAINT:

Confusion, possible ingestion of unknown amount of pills and alcohol abuse.

HISTORY OF PRESENT ILLNESS:

This 45-year-old male was brought in by family members, especially his mother, who thought that he was hallucinating and was acting inappropriately and brought him to the emergency room. Claimant admitted to taking many pills, he does not know the names of them. Some of them do not belong to him. He was confused and restless; he was admitted for further evaluation and treatment.

The emergency room physician provided the following assessment:

Claimant has ingested multiple drugs with acute confusion. Uncontrolled hypertension. Osteoarthritis. Alcohol intoxication. Drug abuse.

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any clinical psychiatric/psychological evaluations. Claimant did not provide a DHS-49D or DHS-49E to establish 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. Claimant testified that he has pancreatitis, stomach dysfunction, arthritis of the neck, right hip dysfunction and claimant also testified that he needs a right hip replacement. Recent clinical evidence provided by the [REDACTED] shows the following diagnoses: acute confusion; ingestion of multiple drugs with toxicity; uncontrolled hypertension; osteoarthritis; alcohol intoxication; and drug abuse. The medical records also show a history of chronic pancreatitis, osteoarthritis, and gastroesophageal reflux. The [REDACTED] [REDACTED] physician did not say that claimant is totally unable to work.

(11) Claimant has not recently applied for federal disability benefits with the Social Security Administration.

(12) Claimant currently smokes 15 cigarettes per day, contrary to medical advice. Claimant also has a recent history of alcohol and drug abuse.

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 a Residual Functional Capacity (RFC) to perform normal work activities.

The department evaluated claimant's impairments using SSI Listings 1.01, 5.01 and 12.01, as a guide. The department determined that claimant does not meet any of the applicable SSI Listings.

The department denied claimant's request for disability benefits based on his failure to provide evidence of an impairment which meets the severity and duration requirements under 20 CFR 416.909.

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 purposes of the MA-P programs. 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 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 purposes.

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 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 is expected to result in death, has existed for least 12 months and totally prevents all basic work activities. 20 CFR 416.909.

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

Under the *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.

However, SHRT did review claimant's eligibility based on SSI Listings 1.01, 5.01 and 12.01. SHRT decided that claimant does not meet an applicable Listing.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked as a machine setup technician and lathe operator for [REDACTED]. This was light/medium work.

The medical evidence of record establishes that claimant has right hip dysfunction with the possibility that claimant needs a right hip replacement. Because of claimant's right hip dysfunction, he is no longer able to do the constant standing and lifting required of his previous work as a machine setup technician and lathe operator.

Since claimant is unable to perform his previous work, he 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 the medical evidence in the record that his combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on his right hip dysfunction, neck arthritis and pancreatic dysfunction. A recent discharge summary (May 21, 2009) shows the following clinical diagnoses: acute confusion, ingestion of multiple drugs and toxicity, uncontrolled hypertension, osteoarthritis, alcohol intoxication, drug abuse, and history of pancreatitis and gastroesophageal reflux. Claimant's hip dysfunction precludes him from performing work requiring constant standing and heavy lifting. Although claimant does have limitations based on his neck and right hip impairments, the medical evidence of record does not show that claimant is totally unable to perform sedentary work.

Third, claimant testified that a major impediment to his return to work was his right hip pain and neck pain. Claimant also experiences digestive issues. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P purposes. The Administrative Law Judge concludes that claimant's testimony about his pain is profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant performs an extensive list of Activities of Daily Living (ADLs), has an active social life with his relatives, drives an automobile approximately 19 times a month 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 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 the claimant's MA-P application under Step 5 of the sequential analysis, as presented above.

Finally, the Administrative Law Judge notes that claimant's history of drug and alcohol abuse is a significant and material factor in claimant's current impairments.

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: December 15, 2009

Date Mailed: December 16, 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:

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