

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: 2009-9949  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 12, 2009  
Van Buren 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 Hartford on February 12, 2009. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by James Tippin (FIM) and Paula Pool (FIS).

Claimant requested additional time to submit new medical evidence. Claimant's native language is Gujarati. He understands a few words of English, but is not able to write, speak or understand English fluently. Claimant was assisted by an interpreter, his [REDACTED]. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on April 16, 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)?

(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 (August 25, 2008) who was denied by SHRT (January 22, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests Retro for June and July 2008.

(2) Claimant's vocational factors are: age—59; education—high school diploma from India; post-high school education—none; work experience—worked as a tenant farmer in India, has not been employed since he moved to the United States and became a citizen.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he moved to the United States approximately 3 years ago.

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

- (a) A loss of feeling in both hands and feet;
- (b) Chronic fatigue;
- (c) Neck pain;
- (d) Heart dysfunction;
- (e) Status post surgery in India;
- (f) Diabetes;
- (g) Diabetic/uses insulin.

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

**OBJECTIVE MEDICAL EVIDENCE (JANUARY 22, 2009)**

SHRT decided that claimant is able to perform normal work activities. SHRT evaluated claimant's eligibility using SSI Listings 1.01, 4.01, 9.08. SHRT decided that claimant does not meet any of the Listings.

SHRT denied MA-P eligibility due to a lack of duration under 20 CFR 416.909.

(6) Claimant lives with his wife. They have in turn lived in the home of their son. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, light cleaning, and laundry (sometimes). Claimant does not use a cane, a walker or a wheelchair. He uses a shower stool on a daily basis. He wears braces on both lower extremities, approximately 20 times a month. Claimant received inpatient hospitalized in 2008 at [REDACTED] where he underwent a cervical fusion.

(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/psychological records are persuasive:

(a) A [REDACTED] was reviewed.

The surgeon provided the following preoperative diagnosis: Cervical disc syndrome (D5-D6, D6-D7) with cervical radiculopathy and myelopathy, greater to the left and now to the right, concomitant history of diabetes, atherosclerotic cardiovascular disease and hypertension, status post history of coronary artery bypass surgery.

\* \* \*

Operative Procedures: Anterior cervical discectomy C5-C6, C6-C7 with arthrodesis, bone grafting, plating and nerve and root exit zone decompression in a systematic manner.

(b) A June 24, 2008 History and Physical Examination was reviewed. The surgeon noted the following history:

Claimant has had coronary bypass surgery within the past year of which he has done well. Claimant has had a history of diabetes insulin dependent and hypertension. In association with above mentioned history, claimant's pain/discomfort of cechalgia is correlated ??? to that of the cervical radiculopathy to the left, versus that of the right....

\* \* \*

- (c) A [REDACTED] states as follows: Claimant is approximately one week status post ACDF D6-C7, C5-C6 and he has had significant relief and improvement of his previous severe left-sided cervical radiculopathy. The cervicalgia has remained stable, in association with his history of diabetes, atherosclerotic cardiovascular disease, hypertension and previous MI history.

\* \* \*

He will return to the clinic in approximately 3-4 weeks with updated x-rays and determine if any additional physical therapy would be indicated. He is very satisfied with a few surgical outcomes. His routine personal care continues as he precedes to interstate travel plans. No other difficulties are noted as to HEENT, CN II-XII, CV, RESP, GI, GU ?.

\* \* \*

(9) There is no probative psychological evidence in the record to establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity. Claimant did not argue that he is disabled based on a severe mental impairment.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's neurosurgeon reports that claimant underwent a cervical discectomy C5-6 and C6-7. There is no indication in the medical documents that claimant has had any significant complications as a result of his fusion. There is evidence in the record to establish that claimant had coronary bypass surgery in India. The

neurosurgeon indicated that claimant has done well since his bypass surgery. The neurosurgeon noted that the patient otherwise denies difficulty sleeping, or with anxiety. The medical record is marginal, and at this time, there is no reliable medical evidence to establish a severe, disabling physical condition at this time.

(11) Claimant has recently applied for federal disability benefits with the Social Security Administration. His application is pending.

### CONCLUSIONS OF LAW

#### CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] as follows:

\* \* \*

Claimant was hospitalized in June 2008 for progressive cervical radiculopathy and myelopathy and underwent anterior cervical discectomy and fusion at C5-C6, C6-C7. The claimant has a history of SI, status post CABG (May 2007) in India (diagnosed as atherosclerotic cardiovascular disease. HGN, hypertension and IDN.

\* \* \*

#### DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled work. The department evaluated claimant's impairments using Listings 1.01, 4.01 and 9.09. The department decided that claimant does not meet any of the Listings.

Based on vocational profile [approaching advanced age (59) with a high school education in India and a history of unskilled work as a farmer, the department denied disability benefits based on a lack of duration 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).

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 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 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.

Claimant must establish an impairment which is expected to result in death, has existed for least 12 months, and totally precludes all current work activity. 20 CFR 416.909.

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

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

**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.

However, SHRT evaluated claimant's eligibility based on Listings 1.01, 4.01 and 9.08. Claimant does not meet any of the Listings considered.

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 tenant farmer in India. This was heavy work.

The medical evidence of record establishes that claimant has had recent back surgery and bypass surgery performed in India in 2007. Based on this medical evidence, claimant is not able to return to his previous unskilled heavy work as a tenant farmer in India.

Therefore, claimant does not meet 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/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 ? arising out of his cervical disectomy effusion at C5-6, C6-C7 (June 2008). It appears that claimant does have some numbness in his legs which is, most likely, related to his cervical radiculopathy and status post disectomy effusion.

Claimant's recent cervical surgery does preclude him from lifting heavy amounts. However, it does not preclude all employment.

Finally, claimant stated a major impediment to his return to work was his back pain associated with his cervical dysfunction. 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 cervical dysfunction and status post coronary bypass surgery (2007). Claimant currently performs many Activities of Daily Living, and has an active social life with his wife, his son, his daughter in law and his grandchildren, with whom he lives.

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). Claimant testified that he did some part-time work in the laundry room of a hotel where his son was employed. The medical evidence shows that he is physically able to perform unskilled light work, similar to the work he performed in the laundry for his son. Because of claimant's total inability to speak and communicate in English, a number of sedentary unskilled jobs are limited.

Based on this analysis, the department correctly denied claimant's MA-P application, based on Step 5 of the sequential analysis, as presented above.

The Administrative Law Judge is not able to award disability benefits based on claimant's profound inability to communicate in English.

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: May 6, 2010

Date Mailed: May 6, 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:

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