

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: 2009-10469  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 16, 2009  
St. Joseph 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 April 16, 2009 in Mendon. Claimant personally appeared and testified under oath.

The department was represented by Mike Conrod (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on May 3, 2010. 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 applicant (October 29, 2008) who was denied by SHRT (January 26, 2009) based on claimant's failure to establish an impairment which meets the departments severity and duration requirements.

(2) Claimant's vocational factors are: age—27; education—high school diploma, post-high school education—none; work experience—greens keeper for a golf course, assembly line worker for a trailer factory.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2008, when he worked as a greens keeper for the [REDACTED].

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

- (a) Status post broken leg;
- (b) Status post left leg fracture repair (July 2008);
- (c) Status post left leg fracture repair (January 2009);
- (d) Must use a crutch to walk.

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

**OBJECTIVE MEDICAL EVIDENCE (JANUARY 26, 2009)**

SHRT evaluated claimant's impairments using SSI Listing 1.02. Claimant didn't meet the requirements of the applicable Listing. SHRT denied benefits based on Claimant's failure to establish an impairment which meets the severity and duration requirements.

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, laundry and grocery shopping (sometimes). Claimant needs a crutch to ambulate. He uses his crutch on a daily basis. Claimant does not use a walker, or a wheelchair. He does use a shower stool on a daily basis. He does not wear braces. Claimant received inpatient hospital care in July 2008 to obtain a surgical repair of his left leg fracture. Claimant also received inpatient hospital care in January 2009 to have a revision of his left leg surgery.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is computer literate.

(8) The following medical reports are persuasive:

(a) A [REDACTED] Summary was reviewed.

The physician provided the following discharge diagnoses:  
Left distal tibia shaft and pilon fracture.

The physician provided the following impression: In summary this is a 26-year-old male with closed fractures of the left tibia and fibula. This is an isolated injury. He is neurovascularly intact with no evidence of compartment syndrome.

It was felt that claimant's fracture could initially be treated closed with a well molded long leg splint. I discussed with claimant that he may benefit from ORIF or other procedures to stabilize the fracture. I discussed risks, benefits and alternatives of operative versus non operative treatment. I encouraged the patient to ponder and decide which treatment he would prefer. He plans to make up his mind and notify us in a few hours.

\* \* \*

(9) Claimant does not allege a mental impairment as the basis for his disability.

(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 had two recent left leg surgeries to repair his left leg fracture. The physician's who submitted reports did not state that claimant was totally unable to work. Claimant admits that he can perform work that involves sitting, but is unable to perform work that requires constant standing.

(11) Claimant did not know whether he had applied Social Security benefits or not.

### CONCLUSIONS OF LAW

#### **CLAIMANT'S POSITION**

Claimant thinks he is entitled to MA-P based on the impairments listed in paragraph #4, above.

#### **DEPARTMENT'S POSITION**

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

The department thinks that claimant failed to establish a clinical impairment which totally precludes claimant from performing all work activities.

#### **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 at 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(b). Since the severity/duration requirement is *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.

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 greens keeper for a golf course. He primarily used a riding lawn mower to cut the grass. The medical evidence of record establishes that claimant is able to perform work that does not require constant standing.

Since claimant's previous work as a greens keeper/lawn technician, he is able to return to his previous work.

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 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 inability to stand for long periods due to recent surgery to repair a left leg fracture. Claimant will be unable to engage in medium and heavy work until after he has completed the recuperation period recommended for his 2009 left leg surgery. However, in the meantime, claimant admitted that he was able to perform work which did not involve continuous standing.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his left leg fracture and recent reconstructive surgery. Claimant performs a significant number of Activities of Daily Living, has an active social life with his mother and father and drives an automobile approximately 30 times a month.

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) that can be performed without continuous standing. In this capacity, he is able to work as a ticket taker at a theatre and as a parking lot attendant. Claimant is also able to return to his previous work as a lawn mower operator for a golf course.

Based on this analysis, the department correctly denied claimant's MA-P application, based on 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 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 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 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:

