

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: 2009-13537
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 7, 2009
Genesee 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 Flint on April 7, 2009. Claimant personally appeared and testified under oath.

The claimant was represented by [REDACTED].

The department was represented by Chris Finton (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on April 8, 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 (September 23, 2008) who was denied by SHRT (March 16, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro-MA-P for June, July and August 2008.

(2) Claimant's vocational factors are: age--51; education—11th grade, post-high school education--GED; work experience—20 years experience as a janitor and floor maintenance man performed while in prison.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when he was a janitor.

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

- (a) Status post gunshot wound (August 2009);
- (b) Status post hospital treatment of wound infection;
- (c) Liver dysfunction;
- (d) Hepatitis;
- (e) Chronic back and leg pain.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 16, 2009)

SHRT thinks that claimant has not established an impairment that meets the severity and duration requirements. SHRT evaluated claimant's impairments using Listing 1.01, 3.

SHRT denied MA-P disability based on failure to establish severity and duration. See 20 CFR 416.909.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), cooking (needs help). Claimant's sister helps him with his activities of daily living. Claimant uses a cane approximately 30 times a month. He wears support hose on his right leg 30 times a month. Claimant does not use a walker, a wheelchair or a shower stool. Claimant received inpatient hospital care on 2 occasions in 2008 to treat claimant's right leg gunshot wound.

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

(8) The following medical records are persuasive:

(a) A February 26, 2009 Medical Examination (DHS-49) was reviewed.

The physician provided the following diagnoses:

- (a) Hepatitis B;
- (b) History of right leg hip pain secondary to femoral fracture.

The physician provided the following functional limitations: Claimant was able to lift 10 pounds frequently. He is able to lift 20 pounds occasionally. The claimant could stand/walk for 2 hours in an 8 hour day. There are no restrictions on sitting. Claimant has normal use of his hands/arms. Claimant has normal use of his feet/legs. Claimant has no mental limitations.

A February 27, 2009 Medical Needs Form (DHS-54) was reviewed. The physician reported the following diagnoses: Fracture, femur on right thigh, hepatitis C. The physician states that claimant does not have a medical need for assistance with activities of daily living.

The physician reported that claimant is unable to work at his usual occupation for 6 months. Claimant was unable to work at any job for 6 months.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that he suffers from anxiety and he is taking medication for this impairment. However, there is no clinical documentation of a severe mental impairment. The February 26, 2009 Medical Examination Report states that claimant has no mental limitations. Furthermore, claimant did not provide a DHS-49D or a DHS-49E to show 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. The treating physician reported the following diagnoses: Hepatitis C and history of right hip pain secondary to femoral fracture. On February 27, 2009, the physician reported that claimant was unable to perform any job for 6 months.

(11) Claimant has recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application; claimant filed a timely appeal.

(12) Claimant is currently received SDA. He was approved for SDA effective October 15, 2008. Claimant's eligibility was reviewed in March 2009 by MRT; MRT denied ongoing eligibility at that time. Claimant's SDA is scheduled to close April 1st.

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 the Residual Functional Capacity (RFC) to perform normal work activities. Claimant's past work as a janitor, while incarcerated, was sedentary, light work. The medical evidence of record establishes that claimant will be able to return to janitorial work after a 6 month period of recuperation.

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).

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 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 he has an impairment which is expected to result in death, or has existed for at least 12 months, thereby preventing 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).

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.

Therefore, claimant does not meet the Step 3 eligibility test. However, the department did evaluate claimant's disability based on SSI Listing 1.01. The department determined that claimant does not meet the severity and duration requirements of the applicable Listing.

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 janitor and floor cleaner while incarcerated. This was sedentary/light work.

There are no medical examination reports in the record that clearly states that claimant is totally unable to work for a 12 month period. The recent DHS-49, however, does state that claimant is unable to work for 6 months. This does not meet MA-P standards.

Claimant has not established that he is totally unable to perform janitorial work for 12 months, he does not meet the Step 4 disability requirements.

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 mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on his anxiety disorder. However, since claimant has not established, with recent clinical evidence, that he does have a severe mental disorder, claimant is not disabled based on a mental disorder.

Second, claimant alleges disability based on hepatitis C, status post gunshot wound to the right hip and chronic back and right leg pain. The recent DHS-49 does establish that claimant has a diagnosis of hepatic C and status post gunshot wound to his right leg. Claimant's physician states that he is unable to work for 6 months during his period of recuperation. However, the clinical evidence does not establish that claimant will be totally disabled for 12 months.

Third, at the hearing, claimant testified that a major impediment to his return to work was his right leg/hip pain.

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 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 the combination of his impairments.

Claimant currently performs several activities of daily living, has an active social life with his sister. 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). He will be able to work in this capacity, after a brief period of rehabilitation; he will be able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter at [REDACTED]. He will also be able to resume his duty as a janitor and floor cleaner.

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: September 7, 2009

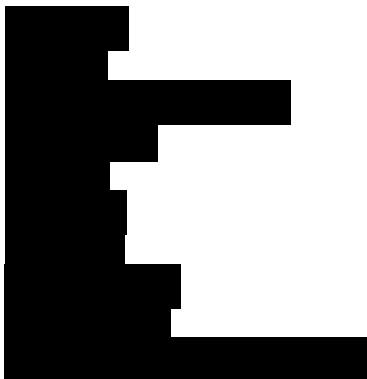
Date Mailed: September 11, 2009

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 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/sd

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