

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: 2009-14961
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 2009
Branch 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 June 17, 2009 in Coldwater. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Jamie Bauerly (FIM).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT.

Claimant did not submit new medical evidence prior to record close date.

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 (October 30, 2008) who was denied by SHRT (March 30, 2009) based on claimant's ability to perform unskilled medium work.

Claimant requests retro MA-P for July, August and September 2008.

(2) Claimant's vocational factors are: age—36; education—8th grade, post-high school education--none; work experience—short and long-haul truck driver.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since September 2008 when he was a long-haul truck driver.

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

- (a) Status post brain surgery (May 2009);
- (b) Right eye dysfunction;
- (c) Bowel dysfunction;
- (d) Left sided weakness;
- (e) Anxiety;
- (f) Doesn't like crowds;
- (g) Depression;
- (h) Short tempered;
- (i) Slow to process information.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 30, 2009)

SHRT decided claimant was able to perform unskilled medium work. SHRT evaluated claimant's eligibility using all SSI Listings at 20 CFR 404, Subpart P, Appendix.

SHRT denied claimant's MA-P application because he failed to establish an impairment which meets the department's severity and duration requirements under 20 CFR416.909.

(6) Claimant lives with a live-in partner (LIP) and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning (sometimes), mopping, vacuuming and laundry. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant received inpatient hospital services in 2008 for seizures and in 2009 for brain surgery.

(7) Claimant has a valid driver's license, but has been advised by his doctor's not to drive because he has experienced recent seizures. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] Report was reviewed.

The neurologist provided the following background:

Claimant is a 36-year-old right-handed white male whose saga is hard to follow because he is very angry. About a year ago, while driving a truck, someone shot-out his window in [REDACTED]. This then gave him ringing in the ear which was relatively severe and he was followed by a [REDACTED] in [REDACTED] for tinnitus and decreased hearing, but over time that seemed to improve. Then he was found to have a right frontal ABM. Somehow, due to lack of insurance, this was never followed-up. He was doing well until he was down in [REDACTED] driving his truck last month, when he had a sudden onset of weird feelings, being in and out of it. He pulled off the road and maybe had a generalized seizure. He woke up behind the seat of the truck. He was weak on his left side and couldn't move. He had been incontinent of urine. He was taken to a local hospital, where he had a MRI. Some doctor said that he should stay the weekend, and that he would operate on him in 3 to 4 days, on his ABM. Claimant returned to [REDACTED] and saw [REDACTED] after a visit to the ER. [REDACTED] gave him the options of gamma knife therapy, versus some type of surgery, which [REDACTED] said he could have in 3 weeks when the public aide had kicked in and there was some payment for it.

There is no family history of any blood vessels that I am aware of. Neurologic deficit is cleared, but he is still left with headache. He was placed on Keppra 500 mg. twice a day, although he is quite irritable, it appears this is due to his impending social disaster, where he won't be able to drive and he might have the neurologic deficit post brain tumor surgery. So, since he most likely had a seizure in [REDACTED], we will leave him on the current dose of Keppra. We will put him on Prednisone 20 mgs. twice a day, for his headache because a prescription pain medicines don't seem to help. We will try to get [REDACTED] to come up with a plan and take action on his ABM, which may have bled in [REDACTED]. I don't have the scans from there. The scans from [REDACTED] do not show any bleeding, and just an ABM. Either way, however, he had seizures or some type of bleed, and so the ABM is acting badly, and he is going to have something done about it.

He wishes to be able to be a cross country driver and to be back where he was. Unfortunately, none of these things are very likely. He understands this and hopefully will take his Keppra. We will give him some Prednisone to help his headache, until a time when he is eligible by State aide to get the appropriate treatment.

* * *

(9) There are no probative psychological reports in the record. Claimant alleges disability based on anxiety, depression, short-temper and slowed mental abilities. 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. Claimant alleges seizures, right eye dysfunction, bowel dysfunction, left-sided weakness and headaches. At this time, the medical evidence of record does not establish that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits, his application is pending before the Social Security Administration.

(12) Claimant currently smokes approximately 6 cigarettes a day, against medical advice.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P benefits based on the following impairments:

Claimant was hospitalized in September 2008 for new onset seizure disorder, headaches, right frontal lobe lesion (arteriovenous malformation) and left hemiphegia involving both upper and lower extremities. He suffers from chronic headaches, blurred vision, dizziness and fatigue. Left-sided numbness, without exertion and requires assistance with ADLs. Claimant has residual side effects from medication and has completed pre-operative visit for upcoming surgery at the [REDACTED] regarding his ABM.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled, medium work. The department evaluated claimants impairments using all SSI Listings at 20 CFR 404, Subpart P, Appendix. Claimant does not meet any of the applicable Listings.

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 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 12 months, and totally prevents all current 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).

The severity/duration requirement is a *de minimus* requirement; therefore, 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, SRHT

evaluated claimant's eligibility based on all applicable SSI Listings at 20 CFR 404, Subpart P, Appendix. Claimant does not meet any of the applicable 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 last worked as a long-haul trucker. This was sedentary work. The medical evidence of record establishes that claimant has had several seizures in the past 12 months. In addition, claimant had brain surgery in May 2009. He is still recovering from his brain surgery, and has not been released to return to his work as a truck driver.

Therefore, claimant 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 a preponderance of the medical evidence in the record, that his combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based a mental impairment: Anxiety, depression, short-tempered and a reduced ability to process information. There is no recent psychological/psychiatric clinical evidence in this record to establish a severe impairment. Also, claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on his history of seizures since 2008 and brain surgery at the [REDACTED]. There are no reports from the [REDACTED].

██████████ and about the procedure performed. There is no clinical evidence in this record to establish that claimant is totally unable to work.

Finally, claimant testified that a major impediment to his return to work chronic migraine headaches. 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 currently performs an extensive list of activities of daily living, has an active social life with his LIP, and drives an automobile approximately once 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). In this capacity, he is physically and mentally able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for ██████████.

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: October 5, 2009

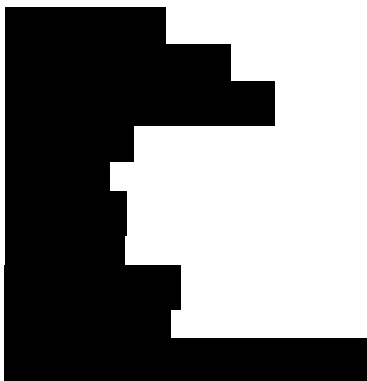
Date Mailed: October 5, 2009

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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