

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: 2009-18316
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 2, 2009
Chippewa 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 July 2, 2009 in Sault Ste. Marie. Claimant personally appeared and testified under oath.

The department was represented by Kim Wilderspin (hearings coordinator/FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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 (December 22, 2008) who was denied by SHRT (May 4, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for September, October, and November 2008.

(2) Claimant's vocational factors are: age—44; education—high school diploma; post high school education—one year at [REDACTED] (engineering major) and journeymen worker; security guard at a casino and iron worker.

(3) Claimant has not performed substantial gainful activity (SGA) since January 2008 when he was a security guard at the local casino.

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

- (a) Seizures;
- (b) Status post fall;
- (c) Acute dermatitis/rash;
- (d) Leg pain;
- (e) Numbness in the bilateral legs;
- (f) Dizziness;
- (g) Chest pains.

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

OBJECTIVE MEDICAL EVIDENCE (May 4, 2009)

SHRT decided that claimant is able to perform his past work.

(6) Claimant lives with his wife and performs the following Activities of Daily Living (ADLs): dressing, bathing, and grocery shopping (needs help). Claimant does not use a cane, a wheelchair or a shower stool. He uses a walker approximately four times a month. He does not wear braces. Claimant received inpatient hospitalization in November 2008 in an alcohol rehabilitation unit. Claimant did not receive inpatient hospital care in 2009.

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

(8) The following medical records are persuasive:

(a) A September 29, 2008 oncology clinic note was reviewed. The oncologist provided the following background:

Claimant is a 43-year-old male who for the last six months to a year has had a generalized pruritic body rash, which initially started in the posterior aspect of his calves, and subsequently extended into other areas, where he now has multiple skin lesions which he describes as starting with itching, which in turn leads to scratching and excoriation, with all leg formation of multiple excoriated areas which eventually heal. The problem is worsened by taking a warm bath, as well as by exposure to the sun, though most of the lesions are in sun protected areas. Claimant has tried to discontinuing alcoholic intake (for 10 days) as well as using multiple skin creams such as Cetaphil, Prednisone, and Benadryl, none of which have solved the problem. He reports that when he uses Cetaphil, the itching tones down for a period of about 45 minutes, but subsequently comes back again.

In addition, claimant describes photophobia, but has no other complaints. He is out of work because of disability related to this particular problem. It is noted that claimant had stains to rule out superficial fungal infection which were negative and he has undergone urinary porphyrin studies, all of which have been within normal limits.

* * *

(b) A [REDACTED] progress note was reviewed. The physician provided the following background:

Claimant is a 43-year-old male, came in because he stated that he had itchy body rash for over six months. He had been on every possible cream or medication you can imagine; however, it did not help the rash at all. He stated that the itching gets much worse after he takes a shower. He also admits to severe photophobia stating that he does not go outside in the street anymore because his blood is bothering him a lot. He states that his brother died from some kind of hereditary disease that he needs constant blood draws to reduce the amount of blood he had.

The physician provided the following assessment:

- (1) Persistent rash, questionable for porphyria cutanea tarda, questionable hemochromatosis;
- (2) Photophobia.

* * *

(9) Claimant does not allege disability based on a mental impairment. Claimant did not supply any clinical evidence of a psychological impairment. Claimant did not provide a DHS-49D or DHS-49E to establish a 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 a chronic rash, seizures, acute dermatitis, leg pain, bilateral feet numbness, dizziness and chest pain. However, the medical reports state the following diagnoses: (1) persistent rash, questionable porphyria cutanea tarda; questionable hemochromatosis; (2) photophobia. The physician who examined claimant at the [REDACTED] did not state the claimant was totally unable to work.

(11) Claimant has not applied for SSI benefits from the Social Security Administration.

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 to perform his past work as a security guard.

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 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 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 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(a).

Since the severity/duration requirement is a *de minimus* requirement, the 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 last worked as a security guard at a local casino. This work was sedentary work.

The medical evidence of record establishes that claimant has a persistent skin rash. The physician who evaluated claimant at the [REDACTED] did not state the claimant was totally unable to return to his previous employment.

The medical evidence of record establishes that claimant 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 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 does not allege disability based on a mental impairment. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a persistent skin rash, which does not respond to claimant's treatment. The physician who examined claimant at the [REDACTED]

████████████████████ stated that claimant had a persistent rash. The physician did not state that claimant was totally unable to work.

Third, claimant testified that a major impediment to his return to work was bilateral leg pain and bilateral numbness of the feet. 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 was totally unable to work based on his combination of impairments. Claimant performed several activities of daily living, has an active social life with his wife and is able to drive at least three times a month. Also, claimant 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 theatre, as a parking lot attendant and as a greeter for ██████████. He is also able to work as a security guard for the casino. Work of this type would afford claimant a sit-stand option.

Based on this analysis, the department correctly denied claimant's MA-P application under 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 30, 2009

Date Mailed: November 2, 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

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