

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: 2009-22619

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 12, 2009

Kalamazoo 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 August 12, 2009 in Kalamazoo. Claimant personally appeared and testified.

The department was represented by Laurie Babbitt (ES).

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 29, 2008) who was denied by SHRT (June 25, 2009) due to claimant's failure to establish an impairment which meets the departments severity and duration requirements. Claimant requests Retro-MA for September, October and November 2008.

(2) Claimant's vocational factors are: age—52; education—high school diploma, post-high school education—[REDACTED]; work experience—owner and operator of a gift store, logistics administer for digital equipment company.

(3) Claimant is currently performing Substantial Gainful Activity (SGA) as an owner/operator of a gift store. Claimant currently works approximately 40 hours per week and his gross income is unknown.

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

- (a) Status post pulmonary embolism;
- (b) Etiology of the pulmonary embolism is unknown;
- (c) Took medication at the time the request for MA-P was made.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 25, 2009)

Claimant was admitted 9/2008 due to a pulmonary embolism without deep venous thrombosis. His chest pain was improving and likely secondary to the pulmonary embolism (page 43).

A DHS-49 form in 1/2009 showed a normal physical examination, except for slight right sided chest pain (page 72). He has no physical limitations (page 73).

ANALYSIS: Claimant was admitted 9/2008 due to a pulmonary embolism. In 1/2009, his examination was normal except for slight right-sided chest pain. His doctor gave him no physical limitations.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant received inpatient hospitalization in 2008 for treatment of a pulmonary embolism. Claimant was not hospitalized in 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately 4 times a month. Claimant is computer literate. Claimant is currently self employed 40 hours per week.

(8) The following medical/psychological records are persuasive:

(a) A January 6, 2009 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses: (a) Pulmonary embolism; (b) Commadin therapy.

The physician did not report any functional limitations. The physician did not report any mental limitations.

(9) Claimant did not allege a mental impairment as the basis for disability. There are no clinical reports of a severe mental impairment in the record. Claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions. A January 8, 2009 Medical Examination Report (DHS-49) reported current diagnoses: (a) Pulmonary embolism; (b) Coumadin therapy. The physician did not report any work limitations.

(11) Claimant has not filed an application for federal disability benefits (SSI) with 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 claimant has normal Residual Functional Capacity (RFC).

The department thinks that claimant does not meet the severity and duration requirements.

The department thinks that claimant's physical condition is improving, or is expected to improve within 12 months from the date of onset of claimant's pulmonary embolism.

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 or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The evidence of record shows that claimant is currently employed full time as an owner/operator of a small gift shop. He currently works an average of 40 hours per week and his earnings are unknown. Therefore, claimant does not meet the Step 1 disability requirement due to his employment.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

A severe impairment is defined as a verified medical condition which precludes all employment. Duration means that the severe impairment is expected to last for 12 continuous months or result in death. 20 CFR 416.909.

SHRT decided that claimant does not meet the severity and duration requirements because claimant's pulmonary embolism was successfully treated and did not prevent claimant from performing substantial gainful activity for 12 continuous months.

Although it is true that claimant had a severe impairment when he was hospitalized in September 2008 for treatment of his pulmonary embolism, that impairment, due to skilled medical care he received at the hospital, was treated successfully, and is no longer severe.

The Federal Regulations provide that the sequential analysis ends when disability or non-disability is established. 20 CFR 416.920(a).

The medical evidence of record establishes that claimant is able to perform normal work activities.

Therefore, the department correctly denied claimant's MA-P application based on claimant's failure to establish an impairment which totally prevents all work activities for a period of 12 continuous months.

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: April 19, 2010

Date Mailed: April 20, 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:

