

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: 2009-25284
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 18, 2009
Schoolcraft 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 18, 2009, in Manistique. Claimant personally appeared and testified under oath.

The department was represented by Lisa Holbrook (ES)

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 (April 1, 2009) who was denied by SHRT (June 18, 2009) based on claimant's failure to establish an impairment which meets the department's duration and severity requirements. Claimant requests retro MA for January 2009.

(2) Claimant's vocational factors are: age--45; education--high school diploma; post high school education--none, [REDACTED]; work experience--fish processing technician on an [REDACTED], carnival driver, and maintenance man for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since November 2008 when he was a fish processing technician on an [REDACTED].

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

- (a) Right side paralysis;
- (b) Permanent nerve damage;
- (c) Chronic pain/muscle spasms;
- (d) Bone spurs;
- (e) Depression;
- (f) Currently receiving therapy from Community Mental Health.

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

OBJECTIVE MEDICAL EVIDENCE (June 18, 2009)

Claimant was admitted in 1/2009 for C5-C7 cervical fusion (page 19). He reported significant improvement in his neck pain and right upper extremity discomfort. He was ambulating without difficulty (page 20). A consult following his surgery in 1/09 showed claimant had diffuse right upper extremity weakness that would be graded at 2-3 strength. He had decreased sensation diffusely in the right hand. Reflexes were trace at the biceps and absent otherwise. His strength was grade 3-4 on the left side and trace deep tendon reflexes. Strength was good in the lower extremities (page 102).

ANALYSIS:

The claimant had cervical fusion on 1/16/09. On 1/17/09 he had some diffuse weakness in the right upper extremity and diffuse decrease in sensation in the right upper extremity. Strength was 3-4 in the left upper extremity and strength was good in the lower extremities. His condition was expected to improve as he recovered from surgery.

* * *

(6) Claimant lives in alone and performs the following Activities of Daily Living (ADLs): dressing, bathing (sometimes), cooking (sometimes), grocery shopping (needs help). Claimant's mother helps him with his chores. Claimant was not hospitalized in 2008. In 2009, he was hospitalized for one day to have back surgery. Claimant does not use a cane, walker, or wheelchair. He uses a shower stool on a daily basis and he wears braces on his bilateral hands on a daily basis.

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

(8) The following medical records are persuasive:

(a) See the SHRT Summary in Paragraph #5, above.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to preclude claimant from performing all customary work functions for the required period of time. Claimant testified that he is receiving [REDACTED] therapy for depression and anger issues. However, there is no clinical evidence from the Ph.D. psychologist/psychiatrist in the record. Claimant did not provide a DHS-49D or DHS-49E to establish 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 reported diagnoses of right side paralysis, permanent nerve damage, chronic pain/muscle spasms and bone spurs. The medical records establish a 2009 cervical fusion and muscle/tendon damage in claimant's hands. However, the medical records do not establish severe functional limitations arising out of claimant's physical impairments.

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

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 a Residual Functional Capacity (RFC) to perform normal work activities. The department denied MA-P due to lack of duration because claimant's condition was expected to improve within 12 months from the date of onset or the date of surgery.

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 does 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).

The department decides eligibility based on mental impairments using the following standards:

(a) Activities of Daily Living.

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) Social Functioning

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) Concentration, Persistence or Pace.

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

(d) Sufficient Evidence:

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) Chronic Mental Impairments:

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for purposes of the program. 20 CFR 416.927(e).

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 earning substantial income, he is not eligible for MA-P/SDA.

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 medical/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. Unless an impairment is expected to result in death, it must have existed, or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

The claimant does not have an impairment or combination of impairments that profoundly limit his physical/mental ability to do basic work activities, he does not meet Step 2 criteria.

Under the *de minimus* rule, claimant meets the severity and duration requirements.

Claimant meets the Step 2 disability test.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

SHRT evaluated claimant's eligibility using all of the listings in 20 CFR 404, Subpart F.

Claimant does not meet any of the applicable Listings.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a fish processing technician on an [REDACTED]. This was medium work.

Claimant is no longer able to perform heavy labor due to his recent cervical fusion and muscle/tendon damage in his hands.

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 by the medical/psychological evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on a mental impairment: depression and anger issues. However, there is no clinical psychological evidence in the record to establish a severe mental impairment. Furthermore, claimant did not submit a DHS-49D or DHS-49E to establish

his mental residual functional capacity. For these reasons, claimant is not entitled to MA-P disability based on his mental impairments.

Second, claimant alleges disability based on his physical impairments: a status post cervical fusion and muscle/tendon damage in his hands. The medical evidence in the record does not show that claimant's impairments totally preclude him from work. It is important to note that claimant testified that he recently applied for work at a gas station and several other places. This shows that the claimant thinks he is able to work.

Third, claimant alleges disability based on his chronic 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 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 performs a couple of activities of daily living, has an active social life with his parents and has recently applied for work.

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 theater, as a parking lot attendant, and as a greeter for [REDACTED]

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 application is, hereby AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 26, 2010

Date Mailed: March 29, 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 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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