

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: 2009-25368
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 20, 2009
Mecosta 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 on August 20, 2009, in Big Rapids. Claimant personally appeared and testified under oath.

The department was represented by Trish McHugh (FIM)

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P) or 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P) or 90 days (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

Claimant is an MA-P/retro/SDA applicant (January 16, 2009) who was denied by SHRT (June 18, 2009) based on claimant's ability to do unskilled medium work.

Claimant requests retro MA for November 2009.

(2) Claimant's vocational factors are: age--57; education--12th grade (no diploma); post high school education--none; work experience--hotel chef, retail butcher, auto repossession technician.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he was a cook at [REDACTED].

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

- (a) Chronic obstructive pulmonary disease (COPD);
- (b) Bilateral grip dysfunction;
- (c) Chronic fatigue;

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

OBJECTIVE MEDICAL EVIDENCE (June 18, 2009)

Pulmonary function study, dated 7/08, showed the claimant was 72" and his best FEV1 was 2.51 and his best FVC was 4.71 (page 70).

The claimant was admitted in 11/08 due to chest pain. On examination, the claimant's lungs were clear. There was no clubbing, cyanosis or edema (page 46). A Myoview revealed fixed inferior defect artifacts versus myocardial infarction, with an ejection fraction of 56% (page 41). Cardiac catheterization revealed nonobstructive mild irregularities (pages 31-32).

A DHS-49 form completed on 11/08 examination showed the claimant had scattered expiratory wheeze, dyspnea and cyanosis (page 52).

ANALYSIS:

The claimant's FEV1 of 2.51 was well above the listing level of 1.65 or less for his height. His FVC of 4.71 was also well above the listing level of 1.85 or less for his height. The DHS-49 form was completed on an 11/08 examination and indicated the claimant had expiratory wheeze and cyanosis. However, when he was admitted in 11/08 for chest pain, there were no wheezes and his lungs were clear. There was no cyanosis. His cardiac catheterization showed no significant coronary artery obstruction. The claimant should avoid heavy lifting. The claimant describes all his past work as heavy. However, the DOT (Dictionary of Occupational Titles) describes a banquet chef or cook as light.

* * *

(6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant does not wear braces. Claimant was hospitalized in November 2008 to receive treatment for heart dysfunction. Claimant was not hospitalized in 2009.

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

(8) The following medical records are persuasive:

(a) A January 2, 2009 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses: chronic obstructive pulmonary disease (COPD), chest pain, claudication and PAD.

The physician reported the following work limitations: Claimant is able to lift up to ten pounds frequently. Claimant is able to stand or walk less than two hours in an eight-hour day. Claimant is able to use his hands/arms for simple grasping, reaching, pushing-pulling and fine manipulating. Claimant has normal use of his feet/legs.

Claimant has no mental limitations.

* * *

(9) Claimant does not allege disability based on a mental impairment. There are no clinical evaluations of claimant's mental capacity in the record. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity based on the current medical record.

(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 complaints of COPD, bilateral grip dysfunction, and chronic fatigue. The physician who submitted the DHS-49 (on January 2009) provided diagnoses of COPD, chest pain, claudication and PAD. However, at this time, the medical records do not establish any severe functional limitations arising out of claimant's physical impairments.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA benefits based on the impairments listed in Paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that the claimant is able to perform unskilled light work, but should avoid heavy lifting.

The department thinks that claimant's previous work as a banquet chef/cook was light work. The department thinks that claimant is able to return to his previous work as a banquet chef/cook.

The department denied disability because claimant retains the physical residual functional capacity to perform medium work. Claimant's past work as a cook/chef is typically performed at the light exertional level in the national economy.

Therefore, claimant retains the capacity to perform past relevant work and MA-P/SDA was denied on that basis.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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).

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 MA-P/SDA programs. 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/SDA purposes. PEM 260/261. “Disability,” as defined by MA-P/SDA 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/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If 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 the Step 2 criteria.

Under the *de minimus* rule, claimant meets the severity and duration requirements of Step 2.

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 the Listings.

SHRT evaluated claimant's impairments using the SSI Listings.

Claimant does not meet the requirements for the applicable SSI Listings.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a chef/cook. This, according to the Dictionary of Occupational Titles (DOT) was light work.

Claimant's work as a chef/cook requires him to stand on his feet continuously for an eight-hour shift. Claimant is also required to use knives and other cooking utensils in order to perform his duties as a chef/cook.

Because claimant has difficulty controlling his grip, he is unable to return to his previous work as a chef/cook.

Therefore, claimant has met his burden of proof to establish that he is unable to return to his previous work as a chef/cook. Claimant meets Step 4.

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/SDA purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on his COPD, bilateral grip dysfunction and chronic fatigue. The medical reports in the record do not establish that claimant's current physical impairments severely limit his capacity to function to the degree that he is totally unable to work.

In summary, claimant currently performs an extensive list of Activities of Daily Living (ADLs), and has an active social life with his live-in partner. 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/SDA application, using 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/SDA disability requirements under PEM 260/261.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby,
AFFIRMED.

SO ORDERED.

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

Date Signed: March 22, 2010

Date Mailed: March 23, 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

cc:

