

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2009-28331
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 14, 2009
Ogemaw 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 October 14, 2009, in West Branch. The claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Joey Marshall (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on April 26, 2010. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

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 (November 25, 2008) who was denied by SHRT (July 15, 2009 and April 27, 2010) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for August, September, and October 2008.
- (2) Claimant's vocational factors are: age--38; education--10th grade; post high school education--GED, currently enrolled in a correspondence course with [REDACTED] [REDACTED] (Criminal Justice Major); work experience--carpet cleaner; security guard, and shelf stocker for a grocery store.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when he worked as a carpet cleaner.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Status post spider bite (August 2008);
 - (b) Cellulitis in both legs;
 - (c) Chronic bronchitis;
 - (d) Congestive heart failure;
 - (e) Difficulty standing for long periods;
 - (f) Arthritis in both knees
 - (g) Seizures;
 - (h) Bilateral lower extremity edema and cellulitis.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (7/15/2009)

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's impairments using SSI Listings 4.02, 1.03, and 8.04. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on 20 CFR 416.909 due to lack of severity and duration.

- (6) Claimant lives with his elderly father and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, vacuuming, and grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant does not wear braces. Claimant received inpatient hospital care treatment in 2008 for a spider bite. He was not hospitalized in 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant was recently cited for driving under the influence of alcohol. Claimant is currently attending college at [REDACTED] using the internet. He is studying criminal justice. He spends three hours each day studying his textbooks.

(8) The following medical records are persuasive:

(a) A [REDACTED] physical examination report was reviewed. The physician provided the following impressions:

- (1) Questionable new onset seizure, likely withdrawal from alcohol;
- (2) History of alcohol abuse;
- (3) History of alcohol cardiomyopathy (not on any medications now);
- (4) History of paroxysmal atrial fibrillation, now in sinus tachycardia with first degree heart block without any significant arrhythmia.
- (5) Congestive heart failure with systolic dysfunction, from his prior records.

NOTE: The examining physician did not report that claimant is totally unable to work.

(b) An [REDACTED] physical examination report was reviewed.

The physician provided the following background/history:

Claimant is a 37-year-old male who had presented to the Emergency Room with a chief complaint of bilateral lower extremity edema and cellulitis that have been present for two weeks.

* * *

The claimant had trouble with weight-bearing of both legs, so that is why I have prompted him to come and seek medical care. Upon seeing the claimant, other than bilateral lower extremity pain, he really did not have any other symptoms that he presented with

including any cardiac symptoms. He did not even feel the atrial fibrillation that he was having through his whole stay.

So, he was started on IV antibiotics and wound management was consulted and ultimately he was started on Whirlpool treatment to better care for his bilateral lower extremity cellulitis, which improved immensely with Whirlpool and daily change of dressing, in combination with IV antibiotics.

██████████ was consulted for his cardiac issues.

* * *

The patient also had a very long history of drinking about two to three 40-ouncers for at least 10 to 15 years. The patient also has a 25-year pack history of smoking. Claimant was also hyponatremic, when he came on the floor with the last level of 118, so we put him on a fluid restriction of 1000 cc per day.

* * *

NOTE: The examining physician did not state that claimant is totally unable to work.

- (c) An ██████████ physical examination report was reviewed.

The physician provided the following background:

Claimant is a pleasant 37-year-old male who presented to ██████████ ██████████ earlier this afternoon with a chief complaint of bilateral lower extremity edema and cellulitis that had been present for approximately two weeks. He states that during the past three to four days, the pain from the lower extremity pathology has become somewhat intense. It precluded ambulation and any weight-bearing. He further states that approximately one week prior, he visited his primary care physician to address the original symptom of isolated lower extremity edema, and was given a water pill which had little or no affect and which he has quit taking. He rates his pain upon interview today at 7 out of 10.

* * *

The examining physician provided the following impression:

- (1) 37-year-old male with a two-week history of lower extremity edema and cellulitic/necrotic changes bilaterally.
- (2) Atrial fibrillation, with ejection fraction found to be approximately 25%; history of hypertension.
- (3) History of tobacco abuse. Claimant was offered nicotine replacement or Chantix of which he elected to try Chantix while in the hospital.

* * *

NOTE: The examining physician did not report that claimant is totally unable to work.

- (9) Claimant does not allege a severe mental impairment with a basis for his disability. There are no probative psychiatric reports 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, or combination of impairments expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do establish that in August 2008, claimant had bilateral lower extremity edema and cellulitis. In 2009, claimant had a new onset seizure (likely withdrawal from alcohol), history of alcohol abuse or cardiomyopathy, history of paroxysmal atrial fibrillation and history of congestive heart failure with systolic dysfunction. None of the physicians who evaluated claimant in 2008 or 2009 reported that he was totally unable to work. The record does indicate that claimant is unable to climb ladders or stairs and unable to stand for an eight-hour shift. At this time, however, there is no probative medical evidence to establish a severe disabling physical condition that totally precludes all sedentary work activities.
- (11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. His application is currently pending.
- (12) Claimant's father pays him \$150 a month to do "chores" around the house. Claimant's home-based work activities include bringing in the mail, making coffee for his father in the morning, and preparing meals for his father using the microwave.

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 is able to perform normal work activities. The department evaluated claimant's impairments using the SSI Listings and determined claimant does not meet any of them.

The department denied claimant's application under 20 CFR 416.909, based on claimant's failure to establish an impairment which meets the department's severity and duration requirements for MA-P benefits.

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).

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. BEM 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.

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 Step 1.

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/or totally prevents all current work activities. 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).

Using the *de minimus* standard, claimant meets 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.

However, SHRT evaluated claimant's eligibility using SSI Listings 4.02, 1.03, and 8.04. SHRT decided that claimant does not meet any of the applicable SSI Listings. Therefore, claimant does not meet Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant was last employed as a carpet cleaner, cleaning carpets in private dwellings.

Because of claimant's edema and cellulitis, he is unable to perform work that requires constant standing. This means that claimant is unable to return to his previous work as a carpet cleaner. The 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/psychiatric 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 mental impairment.

Second, claimant alleges disability based on heart dysfunction, bilateral cellulitis, chronic bronchitis, congestive heart failure and the inability to stand for long periods. Unfortunately, the medical evidence of record does not substantiate that claimant's current physical impairments totally preclude all work activities. None of the physicians who provided reports on claimant's physical condition stated that he was totally unable to work.

Third, claimant alleges disability due to his bilateral leg pain, secondary to his cellulitis/edema. 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 combined impairments. Currently, claimant performs many activities of daily living and receives \$150 a month from his father to assist with household chores. Also, claimant drives an automobile approximately 30 times a month and is taking a correspondence course from [REDACTED] to become a certified private investigator.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform 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].

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Also, what is also significant is that there is no "off work" order from claimant's primary care physician in the record.

The department has established, by competent, material and substantial evidence in the record that it acted in compliance with department policy when it decided that claimant was not eligible for MA-P. Furthermore, claimant did not meet his burden of proof to show that the department's denial of his application was reversible error.

Based on this analysis, the department correctly denied claimant's MA-P application, based on Step 5.

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 BEM 260.

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

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 6, 2011

Date Mailed: July 7, 2011

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.

2009-28331/JWS

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:

