

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: 2009-30640  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 8, 2009  
Clare 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 September 8, 2009 in Harrison. Claimant personally appeared and testified under oath.

The department was represented by Abby Marcus (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

(1) Did the department provide probative psychiatric evidence to show marked improvement in claimant's mental condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis.

(2) Did the department provide probative psychiatric evidence to show marked improvement in claimant's physical condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis.

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 a current MA-P/SDA recipient who had an eligibility review in December 2008.
- (2) Claimant's MA-P/SDA benefits were cancelled on July 1, 2009.
- (3) On June 17, 2009, the local office notified claimant that MRT had denied ongoing MA-P/SDA benefits.
- (4) On June 29, 2009, claimant filed a hearing request. The local office did not pend the closure of claimant's MA-P/SDA because his hearing was not filed within 10 days of the Negative Action Notice.
- (5) Claimant's vocational factors are: age—45; education—high school diploma; post high school education—none; work experience—dishwasher and cook at [REDACTED] restaurant, built pole barns as a subcontractor, built complete houses as an employee of a contractor.
- (6) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he was a dishwasher and cook for KFC.
- (7) Claimant has the following unable-to-work complaints:
  - (a) Status post left foot injury (1997);
  - (b) Left hip dysfunction;
  - (c) Status post 2 kidney surgeries;
  - (d) Major arthritis.
- (8) SHRT evaluated claimant's medical evidence as follows:

**OBJECTIVE MEDICAL EVIDENCE (AUGUST 12, 2009)**

SHRT decided that claimant is able to perform a wide range of unskilled light work. SHRT evaluated claimant's impairments using SSI Listings 1.01. Claimant did not meet any of the

applicable Listings. SHRT denied MA-P/SDA based on Vocational Rule 202.21 because he is able to perform light work.

(9) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, laundry (sometimes) and grocery shopping (needs help). Claimant uses a cane on a daily basis. He does not use a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant was hospitalized in 2008 for reconstructive kidney surgery.

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

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

(a) An [REDACTED] narrative report was reviewed.

The physician provided the following background:

Chief Complaints: Kidney problems, liver function, left leg crush injury.

Claimant has a history of congenital horseshoe kidney. He has undergone 2 stents in 2007, due to urethral obstruction on the left side and then had a urethral reconstruction in February of 2009.

\* \* \*

Claimant has had a chronic left flank wound hernia that was repaired with grafting as well as chronic post surgical abdominal pain due to his recent surgery.

\* \* \*

Claimant also sustained a crushed left foot in 1997 at a construction accident. He did undergo reconstructive surgery at that time. Since then he has essentially had a fusion to his left ankle and degeneration to the left foot.

\* \* \*

Claimant has not worked since 2006. He used to work at [REDACTED] as a cook and stopped because of his kidney obstruction which was diagnosed at that time. Since then he has been undergoing recurrent surgical treatment. He now lives with a girlfriend in a home. He can do his activities of daily living, but has been told not to do any household chores due to his recent surgery per his physician. He used to enjoy hunting, fishing and water skiing. He states he can sit and stand about one hour. He can walk about 50 yards.

\* \* \*

The consulting physician provided the following conclusions:

- (1) Left crushed foot injury;
- (2) Horseshoe kidney.

This is currently claimant's most active problem. He did undergo reconstructive surgery to the urethra and is currently on a 20 pound weight restriction by his physician.

\* \* \*

At this point, however, his prognosis is guarded due to post surgical management and risk for recurrent urethral obstruction and renal failure.

\* \* \*

(12) Claimant does not allege disability based on a mental impairment. Claimant did not provide any clinical assessments to establish a mental impairment. Claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity.

(13) The probative medical evidence establishes an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions. The [REDACTED] states that the horseshoe kidney is claimant's most active problem. Claimant did undergo reconstruction surgery to the urethra and is currently on a 20 pound weight restriction. His current prognosis is guarded due to post surgical management and the risk for recurrent urethral obstruction and renal failure.

(14) 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 a continuation of his MA-P/SDA benefits based on the impairments listed in paragraph #4, above.

Furthermore, claimant recently had surgery on his kidney obstruction in [REDACTED] at the [REDACTED]. Because of the nature of the surgery, he is unable to do rigorous activity. Claimant also has a very limited ability to sit and stand.

**DEPARTMENT'S POSITION**

The department thinks that claimant, notwithstanding his recent surgery, is able to perform light unskilled work. 20 CFR 416.967(b). Also, the department reviewed claimant's impairments using SSI Listing 1.01 and denied claimant because he does not meet the requirements of that Listing.

Note: The department did not review claimant's MA-P/SDA eligibility using the applicable SSI Improvement Rules. Also, the department did not obtain recent medical reports from a kidney specialist to determine claimant's ability to work after claimant recovered from his most recent surgery in 2007. The department did not obtain a recent evaluation from the surgeon who performed claimant's kidney surgery at the [REDACTED].

**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).

**The department has the burden of proof** to show by a preponderance of the medical evidence in the record that claimant's mental/physical impairments have improved to the extent that claimant is now able to perform substantial gainful activity. PEM 260, 261. "Disability," as defined by MA-P/SDA 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 SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimant's 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(c).

The vocational evidence of record shows that claimant is not currently performing SDA. Therefore, claimant meets the Step 1 disability test.

### **STEP 2**

The issue at Step 2 is whether the department has established improvement in claimant's mental/physical impairments to the degree that claimant is now able to perform SGA. **The department has the burden of proof** to show that claimant's mental/physical impairments have

substantially improved to the point where claimant is able to perform basic work activities on a continuous basis.

### **MENTAL IMPAIRMENTS**

Claimant does not allege a mental impairment as the basis for his ongoing disability.

### **PHYSICAL IMPAIRMENTS**

The medical evidence of record establishes that claimant has ongoing physical impairments which have not substantially improved, and still prevent substantial gainful employment. The most important of claimant's physical impairments is claimant's horseshoe kidney which requires regular attention and the placement of stents. In addition, claimant has a chronic left flank wound hernia that was repaired with grafting, as well as chronic post surgical abdominal pain due to his recent surgery.

Claimant also has left foot dysfunction due to a 1997 construction accident. Claimant requires a cane in order to ambulate, or stand for long periods of time.

**In short, the department has not shown that claimant's physical impairments have improved to the point that claimant is now able to perform substantial gainful activity.** In fact, claimant's horseshoe kidney impairment continues to require intensive medical treatment.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established marked improvement in claimant's physical impairments, to the extent that he is not able to perform substantial gainful activity on a continuous basis. PEM 261/261.

Accordingly, the department's denial of claimant's request for ongoing MA-P/SDA is, hereby, REVERSED.

The department shall reconsider claimant's eligibility in August 2010, and shall provide claimant with an appropriate physical examination for this purpose.

SO ORDERED.

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

Date Signed: April 22, 2010

Date Mailed: April 22, 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

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