

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: 2009-35219
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 21, 2009
Ionia 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 21, 2009, in Ionia. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Steve Speiser (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 October 26, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial (October 30, 2009), 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) 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:

(1) Claimant is an MA-P/retro applicant (January 27, 2009) who was denied by SHRT (September 22, 2009) based on claimant's ability to perform unskilled light work. SHRT denied disability based on claimant's failure to provide evidence of an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age--60; education--high school diploma; post high school education--two semesters at [REDACTED] (child psychology major); work experience--bus driver for [REDACTED], security guard supervisor and [REDACTED] appliance salesman.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since January 2008 when he worked as a bus driver for [REDACTED].

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

- (a) Spinal stenosis;
- (b) Shortness of breath;
- (c) Heart disease;
- (d) Right eye dysfunction;
- (e) Spinal stenosis;
- (f) Back pain and leg pain;
- (g) Chronic blood clots in legs;
- (h) Macular degeneration;
- (i) ADHD;
- (j) Anxiety disorder;
- (k) Panic disorder;

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

OBJECTIVE MEDICAL EVIDENCE (September 22, 2009)

Claimant was admitted on 11/2008 due to bilateral pulmonary embolism. He was also found to have right superficial femoral vein partial thrombosis and lumbar spinal stenosis. He had bilateral lower extremity weakness and pain secondary to his spinal stenosis (page 125).

Claimant was admitted again in 3/2009 due to palpitations, possibly secondary to anxiety, versus elevated TSH, his cardiac enzymes were all negative, his stress echo was negative and his EKG was normal. His ejection fraction was between 45% and 50% (page 2).

ANALYSIS:

Claimant has a history of bilateral pulmonary embolism. He also has spinal stenosis. More recently, he had heart palpitations, possibly secondary to anxiety. Additional information would be helpful. The [REDACTED] has two consultative examinations scheduled and copies of those reports would be helpful in evaluating claimant's current functional level.

* * *

NOTE: The two additional DDS consultative examinations were obtained and submitted to SHRT for review.

- (6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, vacuuming (sometimes), and grocery shopping. Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant does not wear braces. Claimant had four hospital admissions in 2008. He was admitted to Sparrow in November 2008 to obtain treatment for a pulmonary embolism. In 2009, he was admitted at [REDACTED] (overnight) for treatment of heart dysfunction.

- (7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant is not computer literate.

- (8) The following medical records are persuasive:
- (a) A [REDACTED] discharge summary was reviewed. The internist provided the following admission diagnosis:
 - (1) Irregular heart rhythm;
 - (2) History of deep vein thrombosis and pulmonary embolism;
 - (3) History of factor five read in Liden deficiency.
 - (4) Right arm pain and swelling;
 - (5) History of low back pain;
 - (6) Hypothyroid;
 - (7) History of attention deficit hyperactivity disorder.
 - (b) The internist provided the following discharge diagnoses:
 - (1) Palpitations, possibly secondary to anxiety versus elevated TSH;
 - (2) History of deep vein thrombosis and pulmonary embolism;
 - (3) History of factor five Ledin deficiencies;
 - (4) Right forearm and swelling;
 - (5) History of low back pain;
 - (6) Hypothyroidism;
 - (7) History of attention deficit hyperactivity disorder (ADHD);
 - (c) A [REDACTED] consult report was reviewed. The consulting physician provided the following assessment: Claimant is a pleasant 59-year-old Caucasian male with a history of DVT and PE, on Coumadin, factor five deficiency and hypothyroidism, who presented with frequent episodes of palpitations, described as irregular heart beat with exertional dyspnea, for at least three-four

weeks. Physical examination was unremarkable. Diagnostic workup showed a normal EKG with normal cardiac enzymes and negative CT scan of the thorax for pulmonary embolism.

* * *

NOTE: The consulting internist did not state the claimant was totally unable to work.

(9) Claimant alleges disability based on a combination of mental impairments (ADHD, anxiety disorder, panic disorder). The report from the consulting psychologist (September 8, 2009) provided the following diagnoses: generalized anxiety disorder, panic disorder with agoraphobia, attention deficit disorder. Axis IV--60. The consulting Ed.D. psychologist did not find claimant unable work. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) Claimant alleges disability on a combination of physical impairments (spinal stenosis, shortness of breath, heart disease, right eye dysfunction, back and leg pain, blood clots, and macular degeneration. The recent [REDACTED] discharge summary [REDACTED]) provides the following discharge diagnoses: (1) Palpitations, possibly secondary to anxiety; (2) History of deep vein thrombosis (DVT); (3) History of factor five Ledin deficiency; Right forearm and swelling; (5) History of low back pain; (6) Hypothyroidism; (7) History of attention deficit hyperactivity disorder (ADHD). The physician who prepared the March 13, 2009 discharge summary did not state that the claimant was totally unable to work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied his application. Claimant has 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 history of bilateral pulmonary embolisms. He has spinal stenosis. Most recently, he had heart palpitations, possibly secondary to anxiety.

The department denied claimant's application because the medical evidence submitted by claimant was insufficient.

SHRT noted that additional medical information would be helpful and the DDS has two consultative examinations pending.

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 issues 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 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 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 purposes.

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 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. Claimant must establish an impairment which is expected to result in death, it must have existed for at least 12 months and/or fully prevents all basic 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).

Under the *de minimus* rule, 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.

Therefore, claimant does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a bus driver at Sparrow Hospital. This was sedentary work.

The medical evidence of record establishes that claimant has low back pain and a history of attention deficit hyperactive disorder, palpitations secondary to anxiety, lower back pain, right forearm swelling and deep vein thrombosis/pulmonary embolism and factor five Ledin deficiency.

The medical evidence of record does not establish that claimant is totally unable to return to his work as a bus driver.

Therefore, claimant does not meet the Step 4 eligibility 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 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 combination of mental impairments (ADHD, anxiety disorder, panic disorder). The recent psychological reports (September 28, 2009) provide the following diagnoses: generalized anxiety disorder, panic disorder with agoraphobia,

attention deficit disorder. Although claimant does have some mental impairments, they do not totally prevent him from performing sedentary work. Also, claimant did not provide a DHS-49D or DHS-49E to establish claimant's mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments (spinal stenosis, shortness of breath, heart disease, right eye dysfunction, back and leg pain, blood clots in legs and macular degeneration). The medical reports in the record do not establish that claimant's physical impairments are so severe that he is totally unable to perform sedentary work.

Third, claimant testified that a major impediment to his return to work was his back and leg pain, secondary to his stenosis. 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. Currently, claimant performs an extensive number of activities of daily living (ADLs), has an active social life with his daughter and grandchildren, and is able to drive a car approximately 12 times a month. In addition, claimant has completed two semesters at LCC.

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]. Work of this type would afford claimant a sit stand option.

Based on this analysis, the department correctly denied claimant's MA-P application, under 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 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: May 4, 2010

Date Mailed: May 5, 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.

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