

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: 2009-36524
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 10, 2009
St. Clair 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 December 10, 2009, in Port Huron.

Claimant was represented at the hearing by [REDACTED]

The department was represented by Jeanette Cates (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:

(1) Claimant is an MA-P/retro/SDA applicant (January 29, 2009) who was denied by SHRT (October 6, 2009) due to claimant's ability to perform unskilled sedentary work. MRT approved claimant for SDA in April 2009. SHRT's denial is based on Med-Voc Rule 201.27. Claimant requests retro MA for December 2009.

(2) Claimant's vocational factors are: age--40; education--high school diploma; post high school education--none; work experience--set up technician for [REDACTED], assembly line worker for parts manufacturer and hi-lo driver.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since December 2008 when he worked as a set up technician for [REDACTED].

- (4) Claimant has the following unable-to-work complaints:
- (a) Status post respiratory failure;
 - (b) Status post acute renal failure (December 2008);
 - (c) Status post acute respiratory acidosis (December 2008);
 - (d) Thrombocytopenia;
 - (e) Liver dysfunction; and
 - (f) New onset dilated cardiomyopathy.

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

OBJECTIVE MEDICAL EVIDENCE (October 6, 2009)

SHRT decided that claimant was able to perform unskilled sedentary work. SHRT evaluated claimant's impairments using SSI Listing 4.01. SHRT decided that claimant does not meet any of the applicable SSI listings. SHRT denied disability based on 20 CFR 416.967(a) due to claimant's ability to perform sedentary work.

* * *

(6) Claimant lives with his parents who help him with many of his activities of daily living and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, laundry (sometimes), and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant does not wear braces.

(7) Claimant has a valid driver's license and drives an automobile on a daily basis. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] Examination Report (DHS-49) was reviewed. The cardiologist provided the following:

HISTORY OF IMPAIRMENTS:

- (1) Dilated cardiomyopathy;
- (2) Liver dysfunction;
- (3) Respiratory failure;
- (4) Renal failure.

The [REDACTED] provided the following current diagnoses:

- (1) Dilated cardiomyopathy;
- (2) Mitral regurgitation;
- (3) Heart failure.

The [REDACTED] cardiologist provided the following physical limitations: Claimant is unable to lift any weight on a regular basis. Claimant is able to sit/walk less than two hours in an eight-hour day.

Claimant is unable to perform simple grasping, reaching, pushing-pulling or fine manipulating with his hands/arms. Claimant is unable to operate foot/leg controls.

(b) A [REDACTED] Needs Form (DHS-54A) was reviewed.

The [REDACTED] provides the following diagnoses:

- (a) Dilated cardiomyopathy;
- (b) Mitro regurgitation;
- (c) Heart failure;
- (d) Cardiogenic shock.

The cardiologist certified that claimant has a medical need for assistance with his activities of daily living including eating, toileting, bathing, grooming, dressing, transferring mobility, taking medications, meal preparation, shopping, laundry and housework.

The [REDACTED] certified that claimant is indefinitely unable to work at his usual occupation and indefinitely unable to work at any job.

- (c) A [REDACTED] report was reviewed.

The cardiologist provided the following background:

As you recall, claimant is a very pleasant 39-year-old gentleman with a recent complicated hospital course. He was admitted to the [REDACTED] [REDACTED] [REDACTED] on [REDACTED] with cardiogenic shock of unclear etiology. At that time, his ejection fraction was calculated at approximately 10%. He was intubated on transfer on multiple vasopressors. He was briefly placed on dialysis from December 21 till December 26 and around that time was extubated. His blood pressure improved significantly and he was started on oral Coreg. He continues to improve and on January 7 he was discharged home. He says that since discharge, he has been doing well. He has not left the house, but he has been up ambulating regularly around the house. He has no associated chest pain or shortness of breath with this, but has not attempted the stairs. He denies any other symptoms and specifically has no palpitations, dizziness, or syncope.

* * *

In summary, claimant is a pleasant 39-year-old gentleman with severe cardiomyopathy of unknown etiology. Possible causes would include a sepsis-induced myocardial depression, familial cardiomyopathy, or arrhythmia-induced cardiomyopathy. He does have a significant family history of cardiomyopathy on his mother's side. As such, he has significantly improved subjectively since his discharge with little evidence of ongoing heart failure by history. However, his exam does note laterally displaced PMI, mitral regurgitation murmur, and S3. We will plan on repeating a transthoracic echocardiogram this afternoon to further evaluate his cardiac structure and function. The remainder of our plan will be based on this. It is possible that despite his lack of current symptoms and minimal Lasix requirement, that this may be an irreversible process. Should this be the case, he will require serial symptomatic and echocardiographic reviews and possibly a transplant work up in the future.

* * *

(9) Claimant does not allege disability based on a mental impairment.

(10) Claimant alleges disability based on a recent event of cardiogenic shock in December 2008. A [REDACTED] Medical Examination Report shows that claimant is unable to lift any weight, unable to stand/walk less than two hours in an eight-hour day, unable to use his hands/arms for simple activities and unable to use his feet/legs to control foot controls. The combination of claimant's heart-related impairments reduces his ability to use his hands, arms, and legs normally. This combination of impairments and physical limitations totally preclude Substantial Gainful Activity (SGA) at this time.

(10) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied claimant's 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.

Claimant thinks that since his work experience is strictly limited to physical labor (machine set up, assembly line work, and hi-lo operation) that the combination of his physical impairments (heart dysfunction, hand dysfunction, and the inability to stand more than two hours) precludes him from hard physical labor, which is all he knows how to do. Although claimant has a high school diploma, he is not considered literate, and does not have any post high school educational attainments.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform sedentary work activities.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing 4.01.

The department thinks that the medical evidence of record indicates claimant retains the capacity to perform a wide range of sedentary work. Using Med-Voc Rule 201.27 as a guide, the department denied MA-P/SDA based on claimant's ability to perform sedentary work.

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).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that his 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 or engaging in work of type performed for pay. PRM Glossary, page 34. The medical vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 eligibility test.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means a severe impairment is expected to last for 12 months or result in death.

Using the *de minimus* rule, claimant meets the severity and duration requirements and 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 alleges disability based on Listing 4.01 and the fact that in December his ejection fraction was 15%. The [REDACTED] reports do not specifically cover each of the requirements listed under Listing 4.01(a).

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

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant was last employed as a set up technician at [REDACTED].

Claimant's previous work as a set up technician. Claimant was required to lift dies and related machinery on a daily basis. Claimant must be able to lift 40 to 50 pounds in order to return to his previous work as a set up technician.

The medical/vocational evidence of record shows that claimant is not able to operate as a set up technician because he is unable to stand for a continuous eight-hour shift. He is unable to stand/walk for a continuous eight hour shift and is unable to use his hands to operate the machinery required to complete a set up.

Based on the medical evidence, claimant meets 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. For purposes of this analysis, we classify jobs as sedentary, light, medium, and heavy. These terms are defined in the [REDACTED] [REDACTED] at 20 CFR 416.967.

The medical evidence of record establishes that claimant has three significant physical impairments: (1) Dilated cardiomyopathy; (2) Mitral regurgitation; (3) Heart failure. This combination of physical impairments interfered with claimant's ability to stand for the required eight-hour shifts and interfered with claimant's ability to use his hands/arms to operate the tools necessary to perform the functions of a set up man. This combination of impairments prevents claimant from doing heavy, medium, and light work.

In addition to the physical impairments mentioned above, claimant is educationally deficient, even though he has a high school diploma. Also, claimant is not computer literate. This lack of basic education makes it exceedingly difficult for him to learn new skills that would permit him to perform sedentary work.

Taking the medical/vocational evidence as a whole, the Administrative Law Judge concludes that claimant is not able to return to his previous work as a set up man technician or to do any other work including sedentary work, due to claimant's combination of physical impairments and due to claimant's lack of relevant work-related continuing education.

Based on this analysis, the department incorrectly denied claimant's MA-P/SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is meets the MA-P/SDA disability requirements under PEM 260/261.

Therefore, claimant is eligible for MA-P/SDA benefits, assuming he meets the financial requirements for each program.

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

SO ORDERED.

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

Date Signed: May 17, 2010

Date Mailed: May 18, 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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cc:

