

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: 2009-4272
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
Ingham 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 in Lansing on March 17, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED]

The department was represented by Gayle Bail (lead worker).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on March 18, 2009. Claimant waived the timeliness requirement so that 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 (April 29, 2008) who was denied by SHRT (November 20, 2008) due to claimant's ability to perform a wide range of light unskilled work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requested retro MA for January, February and March 2008.

(2) Claimant's vocational factors are: age--44; education--high school diploma, post-high school education--associate's degree in computer-aided design from [REDACTED]; work experience--prep cook and cashier for [REDACTED], chore services provider for claimant's mother, inspector on an assembly line.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006, when he worked as a cashier for [REDACTED].

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

- (a) Unable to walk more than 200 yards;
- (b) Unable to stand for long periods;
- (c) Unable to sit for long periods;
- (d) Fatigue;
- (e) Chronic back pain;
- (f) Foot dysfunction;
- (g) Sleep dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (November 20, 2008)

Hospital records of 1/2008 indicate claimant had an extensive hospitalization that began as a complaint of flu-like symptoms. He

was treated and finally released in an improved condition. He was noted to have some altered mental status symptoms, early due to alcohol withdrawal, which also presented as seizures. Discharge diagnosis of paracardial effusion; anasarca, resolved; dyselectrolytemia; hyponatremia and hypokalemia, resolved; arrhythmia; atrial fibrillation; ventilator-dependent respiratory failure; pneumonia; substance abuse--alcohol; hyperglycemia; deconditioning; gastritis; and anemia. (Page 67)

Hospital records of 4/2008 indicate claimant was treated for vasculitis and cellulitis. (P. 13)

Medical Examination Report of 6/2008, from the family physician, reported diagnosis of: CHF; COPD; gastritis; vasculitis; and alcohol abuse. He was noted to have some muscle wasting and malnutirician (weight 122.5 pounds), shortness of breath with minimal exertion, alcohol cardiomyopathy, and chronic back pain. The physician opined claimant's condition was stable. (Page 26)

Consultative examination of 7/8/2008 reported findings on physical exam to be within normal limits. Claimant reported fatigue and shortness of breath with stair climbing. A pulmonary function study reported an FEV1 of 2.90 (listing level was 1.75 or less). (Page 4)

Psychological consultative examination of 6/2008 reported AXIS I diagnosis of: alcohol dependence; adjustment disorder with mixed emotional features. His fund of information was appropriate and he had average social judgment and compliance. (Page 10)

ANALYSIS: In January of 2008, claimant had significant multi-system problems for which he was hospitalized for for several weeks. However, he was successfully treated and was released in an improved condition. In April 2008, he was hospitalized for vasculitis and cellulitis, which was not related to his condition in January. The most recent physical exam of 7/2008 reported findings within normal limits, although he complained of fatigue and shortness of breath, with stair climbing. He may have difficulty with heavy lifting and constant stooping and crouching.

A psychological exam reported some adjustment disorder and alcohol dependence. This would not be expecetd to pose a significant limitation.

P.L. 104.121 is incorporated herein.

Medical opinion was considered in light of CFR 416.927. Evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing (sometimes), light cleaning, vacuuming, and laundry (sometimes). Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant received in-patient hospitalization in April 2008 for two weeks. The discharge diagnosis was vasculitis and cellulitis.

(7) Claimant has a valid driver's license and drives an automobile approximately twice a week. Claimant is highly computer literate and has an associate's degree in Computer Aided Design (CAD).

(8) The following medical records are persuasive:

- (a) SHRT's summary of claimant's medical records is provided in paragraph #5, above.
- (b) A December 15, 2008 Medical Examination Report (DHS-49) was reviewed. The family practice physician provided the following current diagnoses: CHF, COPD, gastritis, vasculitis, alcohol abuse.

The family practitioner reported the following functional limitations: Claimant is able to lift/carry 10 pounds occasionally. He is able to sit/stand at least 2 hours in an 8-hour workday. Claimant is able to use both hands/arms for normal activities (simple grasping, reaching, pushing-pulling and fine manipulating). He is able to operate foot controls. Claimant has no mental limitations.

* * *

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The psychological report in the record (June 2, 2008) reported an Axis I diagnosis of: alcohol dependence, adjustment disorder with mixed emotional features.


Claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions for the required period of time. SHRT acknowledges that claimant had “significant multi-system problems for which he was hospitalized” for four weeks. However, SHRT thinks that claimant was successfully treated in January 2008 and released from the hospital in an improved condition. The medical records indicate claimant was also hospitalized in April 2008 for vasculitis and cellulitis which was not diagnosed during the January hospital stay. However, a recent physical examination (July 2008) reported findings within normal limits, although claimant continued to complain of fatigue and shortness of breath when climbing stairs. The medical record, taken as a whole, does not establish a severe physical impairment that would totally preclude Substantial Gainful Activity for the entire 12-month period.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. His application is currently pending.

CONCLUSIONS OF LAW

CLAIMANT’S POSITION

 described claimant’s position as follows:

Claimant was hospitalized in January 2008 for altered mental status, alcohol withdrawal with seizure, respiratory failure, pericardial effusion, anasarca and electrolyte formality. A DHS-49 from [physician] listed additional diagnoses of CHF, COPD, gastritis, alcohol abuse and vasculitis of bilateral feet. Abnormal findings of muscle wasting, malnutrition and shortness of breath are also provided.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform a wide range of light unskilled work.

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

Based on claimant's vocational profile (younger individual, high school education and unknown work history), the department denied MA-P benefits based on Med-Voc Rule 202.20.

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).

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 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 MA-P.

SGA is defined as the performance of significant duties over a reasonable period of time for pay, or engaging in work of a type generally performed for pay. PRM, Glossary, p. 34.

The medical evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability requirements.

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 the severe impairment is expected to last for 12 continuous months or result in death.

SHRT found that claimant meets the severity and duration requirements. Therefore, claimant meets the Step 2 requirements.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

Therefore, the Administrative Law Judge concludes that claimant does not meet the Step 3 eligibility requirements.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a cook and cashier for [REDACTED]. The medical evidence of record establishes that claimant is able to do some work, but that he is easily fatigued, and is not able to stand for an 8-hour shift.

Therefore, claimant is not able to perform his past work. Claimant meets the Step 4 disability 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. There terms are defined in the [REDACTED], published by the [REDACTED]. [REDACTED] at 20 CFR 416.967.

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

Claimant's allegation of disability is based on his chronic fatigue and his inability to walk, stand or sit for long periods. While claimant's chronic fatigue does limit his ability to do work requiring a high level of physical exertion, the medical evidence of record does not establish that claimant is unable to perform sedentary work. In this capacity, claimant is able to work as a grocery store stocker, a security guard, a ticket taker for a theatre, a parking lot attendant, and a greeter for [REDACTED].

Finally, claimant states that he is unable to work due to chronic back pain and intermittent foot pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability. The Administrative Law Judge thinks that claimant's testimony about his pain, while profound and credible, unfortunately does not entitle claimant to benefits in and of itself.

The medical record establishes that claimant's hospitalization in early 2008 was successful in treating the most serious of claimant's impairments. While claimant's recuperation has been slow, the evidence does not show that claimant is totally unable to perform sedentary work at this time.

Based on this analysis, the department correctly denied claimant's application for MA-P benefits.

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 standards 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: February 26, 2010

Date Mailed: February 26, 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 mailing date of the rehearing decision.

JWS/cv

cc:

