

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: 2009-8168
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 24, 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 March 24, 2009 in Port Huron. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Deidre Mitchell (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on March 25, 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 (June 9, 2008) who was denied by SHRT (January 14, 2009) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for March, April and May 2008.

(2) Claimant's vocational factors are: age--63; education—high school diploma, post-high school education—course work at [REDACTED]; work experience—supervisor of road service for [REDACTED] (25 years).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007, when he was supervisor of road service for [REDACTED].

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

- (a) Chest pain;
- (b) Poor circulation in legs and feet;
- (c) Status post right toe amputation (October 2008);
- (d) Emphysema;
- (e) Fatigue;
- (f) Status post double bypass surgery (2008);
- (g) Dizzy spells;
- (h) Bilateral leg swelling.

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

OBJECTIVE MEDICAL EVIDENCE (JANUARY 14, 2009)

SHRT denied MA-P because claimant lacks severity and duration.

SRHT evaluated claimant's impairments using SSI Listings 4.02, 4.04, 5.08 and 3.01.

* * *

(6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, and grocery shopping (needs help). In May 2008 claimant did not use a cane, a wheelchair or a shower stool. He did not wear braces. He did use a walker on a daily basis. Claimant was hospitalized for inpatient treatment in May 2008 for double bypass surgery and in October 2008 for a right toe amputation. Claimant was not hospitalized in 2009.

(7) Claimant has a valid driver's license but does not drive an automobile because he is unsure and he cannot operate the pedals due to numbness in his feet. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] narrative was reviewed.

The cardiologist provided the following background:

Claimant is a very pleasant 62-year-old gentleman with a significant past medical history of ST-elevation MI, history of hypertension, history of cardiomyopathy, history of significant 3-vessel disease, status post coronary bypass surgery and a history of smoking, history of significant COPD (currently on home oxygen). He is here in my office for follow-up. Claimant's surgical status was stable in the hospital and was discharged on home oxygen. Claimant has been doing well off the cigarettes. He is trying to stay active. As far as the sternotomy claimant noticed that he heard, what he calls, bone cracking on multiple occasions. He also has the bottom part of the wound not completely healed up. There is no evidence of erythema. From a cardiac standpoint, he denied any chest pain. He denied any significant shortness of breath, more so from COPD.

* * *

The cardiologist provided the following assessment:

(1) Significant coronary artery disease, status post coronary bypass surgery;

- (2) Atrial fibrillation post op;
- (3) Dyslipidemia;
- (4) COPD;
- (5) Diabetes.

- (b) A [REDACTED] discharge summary was reviewed. The physician provided the following background:

Claimant is a 62-year-old white male with a history of chronic cigarette smoking and diabetes who presented to the emergency room with acute chest pain. He was found to have acute myocardial infarction. He was stabilized medically and transferred to St. Johns Hospital for further work-up and therapy. He was found on cardiac cauterization to have subtotal occipital occlusion of the left anterior descending coronary artery, with diffuse disease of the left main and proximal circumflex coronary artery stenosis up to 70-80%. Overall, left ventricular functions by echo cardiopathy was moderate to severely impaired with an ejection fraction estimated at 30-35%. Because of the critical anatomy and acute nature of his myocardial infarction, an intra-aortic balloon pump was placed in the catheterization lab and he was advised to undergo emergency myocardial revascularization.

* * *

(9) Claimant does not allege disability based on a severe mental impairment. He did not supply a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's treating physician reports the following diagnoses:

- (1) Significant coronary artery disease;
- (2) Status post coronary bypass surgery (May 2008);
- (3) Atrial fibrillation post-op;
- (4) Dyslipidemia;
- (5) COPD;
- (6) Diabetes.

Also, in October 2008 claimant had a right toe amputation due to complications from his diabetes.

(11) On March 13, 2009, MRT approved claimant for MA-P/lifetime with a retroactive effective date of October 2008. MRT approved based on claimant's October 2008 toe amputation and his May 2008 bypass surgery.

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 retains the Residual Functional Capacity (RFC) to perform normal work activities.

The department denied claimant's MA-P based on claimant's failure to meet SSI Listing 4.02, 4.04, 5.08 and 3.01.

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. 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 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 that he has an impairment which is expected to result in death, or has existed for at least 12 months, thereby preventing all work activities. 20 CFR 416.909.

Also, to qualify for MA-P, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does allege disability based on the SSI Listings.

However, claimant was evaluated using SSI Listings 4.02, 4.04, 5.08 and 3.01.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a supervisor at a trucking company. This was sedentary work.

The medical reports in the record establish that claimant has dizziness and fatigue and that he has poor circulation in his legs and a compromised heart. Claimant is not able to return to full-time employment at this time.

Claimant meets the Step 4 disability requirements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the MA-P disability requirements under PEM 260. The Administrative Law Judge relies heavily on the fact that MRT has recently (March 13, 2009) approved claimant for lifetime MA-P benefits back to October 2008. Since claimant has a lifetime disability back to 2008 and his actual bypass surgery occurred in May 2008, claimant is clearly disabled for MA-P purposes for the retro months of March, April and May 2008.

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

SO ORDERED.

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

Date Signed: July 30, 2009

Date Mailed: July 31, 2009

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/sd

cc:

