

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-41116

Issue No: 2009

Case No: [REDACTED]

Hearing Date:

July 23, 2010

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, a telephone hearing was held on July 23, 2010, in Port Huron. The claimant personally appeared and testified under oath.

The department was represented by Melanie Piper (AP Supervisor).

The Administrative Law Judge appeared by telephone from Lansing.

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 applicant (March 23, 2010) who was denied by SHRT (July 7, 2010) due to claimant's ability to perform unskilled sedentary work under 20 CFR 416.967(a). SHRT relied on Med-Voc Rule 201.24 as a guide.

- (2) Claimant's vocational factors are: age--44; education—10th grade; post high school education--none; work experience—built tanks for [REDACTED] and worked as a floor and carpet installer.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when he worked as a tank builder for [REDACTED].
- (4) Claimant has the following unable-to-work complaints:
 - (a) Sleep apnea;
 - (b) Emphysema;
 - (c) Legs swell;
 - (d) Heart dysfunction; and
 - (e) Variable heart beat.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (July 7, 2010)

SHRT decided that claimant was able to perform unskilled sedentary work. SHRT evaluated claimant's impairments using SSI Listings 3.01 and 4.01. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on 20 CFR 416.967(a) due to claimant's ability to perform unskilled sedentary work.

* * *

- (6) Claimant lives with his girlfriend and performs the following Activities of Daily Living (ADLs): dressing, bathing, and cooking (sometimes). Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2009 or 2010.
- (7) Claimant has a valid driver's license and drives an automobile approximately seven times a month. Claimant has visitors over approximately six times a month. Claimant goes fishing 30 times a month, weather permitting.
- (8) The following medical records are persuasive:
 - (a) A [REDACTED] report was reviewed.

The internist summarized claimant's complaints as follows: emphysema, sleep apnea, enlarged heart, legs swelling.

Claimant has a history of emphysema for the past seven years. He states he has a cough productive of white thin sputum without hemoptysis. He smokes about a pack a week for ten years. He denies any allergies, but cold makes his breathing worse. He was recently diagnosed with sleep apnea but states he cannot afford a CPAP machine. He has paroxysmal nocturnal dyspnea. He denies any heart failure. He was told he has a cardiac enlargement. He sleeps on two pillows. He can walk about 60 feet before he gets winded.

Claimant has not worked since December 2009. He used to work at [REDACTED] and stopped at that time because of his narcolepsy and shortness of breath. He lives with his girlfriend in an apartment. He is able to do some dishes but otherwise does not do any household chores. He is able to climb steps. He is able to drive. Claimant otherwise sleeps and on occasion will go fishing.

Other than above, recent foot injury when he hit it with a shovel approximately a week ago. He currently is taking supportive care. Obesity with an 80 pound weight gain in the past year, hypertension. Tobacco: smokes one pack a week for ten years. Alcohol: drinks six beers a week. Hobbies: fishing. Occupation: factory, last worked in December 2009. Education: 10th grade.

CONCLUSIONS:

- (1) Shortness of breath (SOB): Spirometry is enclosed for your review. He appears to have moderate chronic bronchitis. I suspect this may be due to occupational exposure, as well as tobacco use. He is not on inhaler therapy. He has a history of sleep apnea, which only aggravates his symptoms. His heart sounds are different. Weight loss would be helpful. His current prognosis is guarded, but would be remediable with appropriate treatment.

Please note, he did sustain a recent injury to his right foot, supportive chair and topical treatment will most likely remediate, without any long term deficits.

NOTE: The examining physician did not report that claimant is totally unable to work.

* * *

(b) A [REDACTED] report was reviewed. The physician provided the following impression:

- (1) Obstructive Sleep Apnea Syndrome;
- (2) Periodic Limb Movements Disorder.

* * *

- (9) Claimant does not allege a severe mental impairment as the basis for his disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.
- (10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do establish the following combined conditions: sleep apnea, emphysema, enlarged heart and legs swelling. None of the physicians who evaluated claimant in 2010 reported that he was totally unable to work. The record does indicate that claimant is short of breath and does not have much endurance, thus limiting his ability to climb and walk extensively. At this time, however, there is no probative medical evidence to establish a severe disabling condition that totally precludes all sedentary work activities.
- (11) Claimant has not applied for federal disability benefits.
- (12) The medical records establish a history of heavy smoking (ten years), against medical evidence (AMA). Also, claimant drinks approximately six beers each week and is approximately 80 pounds overweight. Even though claimant has several significant impairments, he is able to go fishing on a daily basis, weather permitting.

CONCLUSIONS OF LAW

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis

and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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. BEM 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.

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 Step 1.

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, has existed for 12 months and/or totally prevents all current 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).

Using the *de minimus* standard, claimant meets Step 2.

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 the Listings.

However, SHRT evaluated claimant's eligibility using SSI Listings 3.01 and 4.01. SHRT decided that claimant does not meet any of the applicable Listings.

Therefore, claimant does not meet Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a storage tank builder for [REDACTED]. Claimant's assembly line work as a storage tank builder was light work which required him to stand continuously for an eight-hour shift. Because of claimant's emphysema, nocturnal dyspnea and obstructive sleep apnea syndrome, claimant is unable to return to his previous work as a storage tank builder for [REDACTED].

Therefore, claimant meets Step 4.

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/psychiatric evidence in the record that his combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on a combination of impairments: emphysema, sleep apnea, and paroxysmal nocturnal dyspnea. Unfortunately, the medical evidence of record does not substantiate that claimant's current physical impairments totally preclude all work activity. None of the physicians who provided reports on claimant's physical condition stated that he was totally unable 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 several activities of daily living, and is able to fish on a daily basis. In addition, claimant has a valid drivers' license and drives an automobile approximately seven times a month. Friends visit him at his home on a regular basis.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform 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].

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Also, it is significant that there is no "off work" order from claimant's primary care physician in the record.

The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it denied claimant's MA-P application. Furthermore, claimant did not meet his burden of proof to show that the department's denial of his application was reversible error.

Accordingly, the department correctly denied claimant's MA-P application based on 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 BEM 260.

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

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 8, 2011

Date Mailed: July 11, 2011

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.

JWS/tg

cc:

