

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: 2010-50960
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 6, 2010
Lenawee 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 6, 2010, in Adrian. The claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Michelle Ritchie (FIS).

By agreement of the parties, the record closed on October 6, 2010.

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 (August 24, 2010) who was denied by SHRT (August 31, 2010) due to claimant's ability to perform his past sedentary relevant work.

Claimant requested retro MA for February 2010.

(2) Claimant's vocational factors are: age--50; education--high school diploma; post high school education--none; work experience--light assembly work at numerous local factories.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when he worked for a wood shop building wooden crates.

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

- (a) Arthritis in right hip;
- (b) Arthritis in left knee; and
- (c) Hypertension.

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

OBJECTIVE MEDICAL EVIDENCE (August 31, 2010)

MEDICAL SUMMARY:

Claimant is alleging disability secondary to arthritis of hips and knees and hypertension. Claimant was inpatient, page 17, secondary to pneumonia and poorly controlled hypertension. Claimant stated at that time that he was out of medications. Claimant is known to have a history of poor medical compliance. The Social Security Administration (SSA) had the claimant attend an examination wherein it is noted that the claimant's primary concerns are secondary to lack of medical follow-up and medical noncompliance. This examiner also notes that the use of an assistive device would be beneficial for pain control. There is no evidence of ongoing pulmonary issues.

ANALYSIS:

The medical evidence supports that claimant retains the ability to perform light exertional work.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking, dishwashing, light cleaning, mopping (sometimes), vacuuming, and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces. Claimant was hospitalized once in 2010 for five days where he received treatment for pneumonia.

(7) Claimant has a valid driver's license and drives an automobile approximately 15 times a month. He frequently chauffeurs his relatives to doctors' appointments. Claimant is computer literate.

(8) The following medical records are persuasive:

The medical evidence is accurately summarized by SHRT Decision in Paragraph #5, above.

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant does not allege a mental impairment as the basis for disability.

(10) The probative medical evidence, standing alone, does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions. The medical records do show a diagnosis of arthritis of the hips and knees and hypertension. Claimant was also hospitalized recently for pneumonia. A recent SSA internal medicine examination report that claimant has synovial thickening in multiple joints. The consultant further reports claimant's condition appears to be due to lack of follow up and

treatment as well as compliance. The consulting internist did not state the claimant was totally unable to work.

(11) Claimant recently applied for federal disability (SSI) benefits. Social Security denied his application. The claimant filed a timely appeal.

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).

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/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. PEM/BEM 260.

Claimants, who are working and performing Substantial Gainful Activity (SGA), are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The Medical/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. Unless an impairment is expected to result in death, it must have existed, or be expected to exist, for a continuous period of at least 12 months. 20 CFR 416.909.

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

If claimant does not have an impairment or combination of impairments which profoundly limit his physical or mental ability to do basic work activities, he does not meet the Step 2 criteria. 20 CFR 416.920(c). SHRT decided claimant meets the severity and duration requirements using the *de minimus* test.

Therefore, 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 under Listings 1.02/03, 3.01 and 4.04. Claimant does not meet any of these 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 wooden crate fabricator at a local factory. This was light work.

The Medical/Vocational evidence of record shows that claimant has arthritis pain in his hips and knees. Claimant's chronic arthritic condition prevents him from standing for long periods of time.

Based on the medical evidence of record, claimant is not able to return to his previous work as a wooden crate fabricator.

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. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED]. [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Notwithstanding claimant's chronic hip and knee pain, he is able to simple, unskilled work, including working as a ticket taker for a theater, as a parking lot attendant, janitor, and as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to his return to work was his hip and knee pain. 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 credible, but out of proportion to the objective medical evidence as it relates to claimant's ability

to work. Although claimant's pain medications do give claimant some pain relief, the medical records do show that he has not been compliant with his medical treatments. It should be remembered that even though claimant has chronic arthritic pain, he does have notable residual work capacities. Claimant performs an extensive list of activities of daily living, he occasionally mows the law, he chauffeurs his relatives to appointments and he is computer literate. This means that claimant is able to perform unskilled sedentary work (SGA).

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his chronic arthritic pain.

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/BEM 260. Claimant is not disabled for MA-P purposes based on Step 5 of the sequential analysis, as described above.

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: October 22, 2010

Date Mailed: October 25, 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.

JWS/tg

cc:

