

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: 2010-1456
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2009
Allegan 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 November 19, 2009, in Allegan. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Mariah Schaefer (APS Supervisor).

Claimant requested additional time to submit new medical evidence. The new medical evidence was submitted to the State Hearing Review Team (SHRT) on November 20, 2009. Claimant waived the timeliness requirements so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge made the final 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 1, 2009) who was denied by SHRT (October 14, 2009) based on claimant's nonsevere impairment, secondary to alcohol abuse. Claimant requests retro MA for March 2009.

(2) Claimant's vocational factors are: age--47; education--11th grade; post high school education--none; work experience--wood preparation assembly line worker for Great Lakes Wood and Finishing, self-employed rough and finish carpenter.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2008 when he was referred by a temporary services agency to [REDACTED].

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

- (a) Cirrhosis of the liver;
- (b) Abdominal pain;
- (c) Peptic ulcer disease;
- (d) Back pain; and
- (e) Shortness of breath.

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

OBJECTIVE MEDICAL EVIDENCE (October 14, 2009)

Claimant alleges impairment conditions of cirrhosis of the liver, abdominal pains, peptic ulcer disease, back pain and shortness of breath. Claimant does not allege, but records show that there is a lengthy history of alcohol abuse. Recent records indicate that claimant has been in for alcohol abuse with admitting blood work being significantly out of balance, but returns to near normal by the end of the hospital stay, being off alcohol and rehydrated.

ANALYSIS:

The findings support that claimant's condition is directly related to alcohol abuse. There are no current findings that support severe liver or pancreatic disease, secondary to alcohol abuse. Once claimant has been off of alcohol and properly hydrated, symptoms abate.

* * *

(6) Claimant lives with his father and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, light cleaning, mopping (sometimes), vacuuming (sometimes), laundry and grocery shopping. Claimant was hospitalized in 2009 for inpatient treatment pancreatitis, liver dysfunction, and alcohol abuse. Claimant was not hospitalized in 2008.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A February 21, 2009 Medical Examination Report (DHS-49) was reviewed.

The gastroenterologist provided the following current diagnoses: alcoholic liver disease.

The gastroenterologist provided the following functional limitations: claimant is able to lift up to ten pounds occasionally. He is able to stand/walk less than two hours in an eight-hour day. He is able to sit less than six hours in an eight-hour day.

The gastroenterologist states that claimant has normal use of his hands/arms and normal use of his feet/legs.

The physician provided the following note: Liver disease has left him weak and fatigued.

NOTE: The physician did not state that claimant was totally unable to work.

- (b) An [REDACTED] was reviewed. The gastroenterologist provided the following background:

This is a 47-year-old claimant of [REDACTED] being seen for a two-month follow-up for his elevated liver function tests. He was first seen by [REDACTED] at the end of June with complaints of right-sided abdominal pain. He has a history of heavy alcohol use of drinking beer "morning till night." At the point he was told that he had abnormal liver function tests, he quit drinking alcohol, which was on the 28th of March and he has had no alcohol since that time. He recently underwent a liver biopsy which revealed Grade II Stage III chronic Hepatitis. The claimant states that he is gaining weight and his stomach is swelling. He denies any signs of jaundice, skin itching, dysphagia or mental confusion. He has had no signs of rectal bleeding, but stated that they found blood in his stool with a rectal exam.

He is applying for Social Security benefits including Medicaid and Disability. He is requesting paperwork to be filled out and sent to the Social Security Office. He currently states after giving up alcohol, he is eating significant amounts of food as well as drinking two to three gallons of water per day. His last liver function tests reveal normal transaminases.

ROS is significant for abdominal bloating and swelling abdomen; history of reflux. Denies fevers, chills, anorexia, weight loss, nausea, vomiting, heartburn, dysphagia, constipation or diarrhea.

PE: This is an anxious appearing gentleman in no acute distress. His physical exam reveals some mild lower abdominal distention. There is some questionable palpation of enlarged liver two finger widths below the right rib cage area. There is no peripheral edema.

NEURO: He does have some mild upper tremors.

ASSESSMENT:

1. Cirrhosis;
2. Ascites;
3. Hemoccult positive; and
4. GERD.

* * *

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

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any clinical evidence from a psychiatrist to establish a severe mental impairment. 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 expected to prevent claimant from performing all customary work functions for the required period of time. Claimant reported the following impairments: Cirrhosis of the liver, abdominal pain, peptic ulcer disease, back pain, and shortness of breath. The gastroenterologist from [REDACTED] provided the following diagnoses: (1) Cirrhosis; (2) Ascites; (3) Hem occult positive; (4) GERD. At this time, the medical records do not establish a severely debilitating physical impairment.

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

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 the medical records show claimant's physical impairments are directly related to his recent alcohol abuse. The department thinks that the medical evidence does not contain current findings supporting a diagnosis of liver or pancreatic disease, secondary to claimant's alcohol abuse. The department notes that once claimant has discontinued using alcohol, and is properly hydrated, his symptoms abate.

The department denied claimant's request for disability benefits based on a nonsevere impairment secondary to alcohol abuse. 20 CFR 416.935 and Public Law 100-121. The department also considered SSI Listings 1.04, 3.01, 5.01 and 12.09.

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 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).

A statement by a medical source (MSO) that an individual is “disabled,” or “unable to work” does not mean that disability exists for purposes of the MA-P program.

20 CFR 416.927(e).

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 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 disabled for MA-P disability purposes.

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 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 an impairment which is expected to result in death, has existed for 12 months and totally prevents all basic 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 the Step 2 eligibility requirements.

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 did review claimant's eligibility based on SSI Listings 1.04, 3.01, 5.01 and 12.09. SHRT decided that claimant does not meet any of the applicable SSI Listings.

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 last worked as an assembly line wood finisher. This was light work.

The medical evidence of record establishes that claimant has cirrhosis of the liver, ascites, positive hem occult and GERD. The recent report (February 21, 2009) by a gastroenterologist states the claimant is able to occasionally lift up to ten pounds, stand/walk less than two hours in an eight-hour day and sit less than six hours in an eight-hour day. However, claimant has normal use of his hands/arms, feet/legs.

Because claimant is unable to stand constantly for an eight-hour shift, he is unable to return to his previous work as a wood finisher on an assembly line.

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 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 mental impairment.

Second, claimant alleges disability based on cirrhosis of the liver, abdominal pain, peptic ulcer disease, back pain and shortness of breath. The medical evidence of record shows that many of claimant's impairments are reduced or eliminated once claimant stops abusing alcohol and rehydrates his body. Although claimant does have limitations based on his back pain and shortness of breath, the medical evidence of record, at this time, does not establish that claimant is totally unable to perform sedentary work.

Third, claimant testified that a major impediment to return to work was his back 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 profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combined impairments. Currently, claimant performs many activities of daily living and has an active social life with his father.

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, claimant is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

Consistent this analysis, 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 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: 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.

JWS/tg

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