

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-2760
Issue No: 2009; 4031
Case No: [REDACTED]

Hearing Date:
December 15, 2009
Muskegon 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 December 15, 2009, in Muskegon. The claimant personally appeared and testified under oath.

The department was represented by Karen Willet (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on December 29, 2009. Claimant waived the timeliness requirement so 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) or 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P) or 90 days (SDA)?

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/SDA applicant (May 18, 2009) who was denied by SHRT (November 2, 2009 and January 4, 2010) due to claimant's ability to perform unskilled light work. Claimant requests retro MA for February, March and April 2009.
- (2) Claimant's vocational factors are: age--52; education—10th grade; post high school education--none; work experience—janitor and laborer. Claimant was a diesel mechanic while serving in the [REDACTED].
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he worked as a janitor.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Arthritis;
 - (b) Bone spurs in back;
 - (c) Gallbladder surgery is recommended; and
 - (d) Kidney surgery is recommended.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (January 4, 2010)

This claimant has returned to the State Hearing Review Team by the Administrative Hearings with newly submitted medical evidence and correspondence.

Claimant is a 52-year-old male with ten years of education and an unskilled work history.

Claimant is alleging disability due to heart disease, hypertension, kidney dysfunction, and back pain.

The claimant was denied by the Medical Review Team (MRT) on October 9, 2009 and the State Hearing Review Team (SHRT) on November 2009.

SHRT evaluated claimant's eligibility using the following listings: 4.01; 6.01; 1.01.

SHRT denied claimant's application based on his ability to perform light unskilled work under 20 CFR 416.967(b).

- (6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant uses a cane approximately 30 times a month. He does not use a walker, wheelchair or shower stool. Claimant does not wear braces. Claimant was hospitalized in 2009 for heart dysfunction.
- (7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is a long time smoker and uses approximately 10 cigarettes a day.
- (8) The following medical records are persuasive:
 - (a) A [REDACTED] history and physical report was reviewed.

The physician provided the following impressions:

This 51-year-old male with history of hypertension, hyperlipidemia, ongoing tobacco abuse, and a remote history of pulmonary embolus in the 1970s, who presented to [REDACTED] emergency department complaining of substernal chest pain since 3 a.m. this morning. Claimant states he was seen at [REDACTED] yesterday for back pain. He was discharged from the emergency department.

EKG shows sinus tachycardia. His cardiac enzymes were elevated with a CK of 14.94 with a troponin of 8.63. Claimant was taken to the cardiac catheterization lab. He is obtuse marginal branch of the left circumflex artery was occluded. Claimant underwent angioplasty and stent placement. Post-procedure, claimant was transferred to the intensive care unit for monitoring. The specialist in hospital medicine asked to evaluate and admit this patient. At the time of my evaluation, claimant was chest pain free. He is lying comfortably.

PAST MEDICAL HISTORY:

- (1) Hypertension;
- (2) Dyslipidemia;
- (3) Remote history of pulmonary embolus;
- (4) Tobacco abuse.

PAST SURGICAL HISTORY:

- (1) Cardiac catheterization and stent placement done today;
- (2) Carpal tunnel surgery.

* * *

IMPRESSION:

- (1) Non-ST elevation myocardial infarction, Status post cardiac catheterization, angioplasty And stent placement due to obtuse marginal branch of the left circumflex artery.
- (2) Hypertension; hypertension controlled;
- (3) Hyperlipidemia;
- (4) Elevated liver function test;
- (5) Ongoing tobacco abuse;
- (6) A remote history of pulmonary embolus;
- (7) Hypokalemia.

* * *

- (b) A [REDACTED] consultation was reviewed.

ADMITTING DIAGNOSIS:

Myocardial infarction, status post stent placement.

HISTORY:

Claimant is a 51-year-old gentleman who has had long-standing back complaints. He underwent admission for myocardial infarction and stent placement, and underwent an abdominal CT where he was found to have multilevel degeneration of his lumbar and thoracic spine. I was consulted because of the radiographic degeneration of his disc, as well as axial back pain.

* * *

DIAGNOSIS:

- (1) Chronic axial back pain;
- (2) Post myocardial infarction.

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

- (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 that on July 1, 2009, claimant had a cardiac catheterization angioplasty and stent placement due to occluded arteries. None of the physicians who evaluated claimant at [REDACTED] reported that claimant was totally unable to work.
- (11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. His application is currently pending.
- (12) During claimant's hospitalization at [REDACTED] in [REDACTED], he was advised by the physicians to stop smoking, but he has declined to do.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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/SDA purposes. BEM 260/261. "Disability," as defined by MA-P/SDA 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/SDA.

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/SDA, 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 a Listing.

However, SHRT evaluated claimant's eligibility using SSI Listings 4.01, 6.01 and 1.01. SHRT decided that claimant does not meet any of the applicable SSI 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 janitor doing light work. The medical records show that claimant has heart dysfunction and is therefore unable to stand continuously for an eight-hour shift. This means that claimant is unable to return to his previous work as a janitor.

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/SDA purposes.

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

Second, claimant alleges disability based heart dysfunction, chronic axial back pain and post myocardial infarction and an inability to stand for long periods. 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 examined claimant at [REDACTED] stated that he was totally unable to work.

Third, claimant alleges disability due to osteoarthritis and spine problems, with low back pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA 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 combination of impairments. Currently, claimant lives with a girlfriend and performs numerous activities of daily living, including: dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. In addition, claimant has a valid drivers' license and drives an automobile approximately 30 times a month.

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.

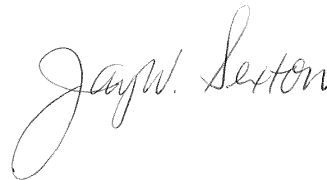
The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it decided that claimant was not eligible for MA-P/SDA. Furthermore, claimant did not meet his burden of proof to show the department's denial of his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

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 5.

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/SDA disability requirements under BEM 260/261.

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.

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cc:

