

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: 2010-36295
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 19, 2010
Eaton 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 August 19, 2010, in Charlotte. The claimant personally appeared and testified under oath.

The department was represented by Christine Dennings (ES).

The Administrative Law Judge appeared by telephone from Lansing.

By agreement of the parties, the record closed on August 19, 2010.

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 (March 2, 2010) who was denied by SHRT (June 2, 2010) due to lack of duration and claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28, as a guide. Claimant requested retro MA for December 2009.

(2) Claimant's vocational factors are: age--44; education--high school diploma; post high school education--[REDACTED], studied carpentry; work experience--claimant is a journeyman carpenter. He worked as a trim carpenter for a building contractor and has been a journey carpenter for approximately 15 years.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a journey carpenter for approximately 15 years.

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

- (a) Cancer;
- (b) Status post surgery;
- (c) Short-term memory dysfunction; and
- (d) Loses his train of thought while speaking.

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

OBJECTIVE MEDICAL EVIDENCE (6/02/2010)

SHRT decided that claimant was able to perform unskilled medium work. SHRT evaluated claimant's impairments using SSI Listing 13.01. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on Med-Voc Rule 203.28 and claimant's ability to perform unskilled medium work under 20 CFR 416.967(c).

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping (sometimes), vacuuming, laundry, and grocery shopping. Claimant uses a cane approximately 20 times a month. Claimant uses a walker approximately 15 times a month. Claimant does not wear braces on his neck, back arms or legs. Claimant was hospitalized four times in 2009. The last hospitalization was for alcohol detox. Claimant was hospitalized in 2010 to obtain treatment for rib injury.

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

(8) The following medical records are persuasive:

(a) A [REDACTED] history and physical was reviewed. The physician provided the following history:

Claimant is a 43-year-old male with a history of daily alcohol use. The patient states he used to drink on the weekends only, however, since he is currently unemployed, he has been drinking daily. He has noted since October that he has lost a total of 34 lbs. He also has an esophageal mass that is being monitored by surgery. The patient states that he has seen his family doctor recently and was having an outpatient work up for his weight loss, however, because of nausea, vomiting, and weakness, he was brought to the Emergency Room.

The physician provided the following assessment:

- (1) Hypokalemia, likely secondary to alcohol abuse. Patient drinks daily. Has improved and today it is 3.2 with supplementation. He has responded appropriately.
- (2) Weight loss. Patient has an outpatient work up. He is already scheduled for a colonoscopy. He did have a CT of his abdomen and pelvis during the hospitalization which shows findings likely suggestive of Crohn's disease, however, the patient is asymptomatic.

NOTE: The [REDACTED] physician did not state that claimant is totally unable to work.

* * *

(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 disability based on a mental impairment. There are no clinical evaluations to establish a mental illness in the record.

(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 [REDACTED] physician provided the following diagnosis: Hypokalemia, likely secondary to alcohol abuse and weight loss. The [REDACTED] physician did not state claimant was totally unable to work based on his physical impairments.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration (SSA). Claimant alleged the same impairments which are alleged here. Claimant's SSA claim is currently pending.

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).

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/SDA purposes. PEM/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. PEM/BEM 260/261.

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 from the date of application.

20 CFR 416.909. The durational requirement for SDA is 90 days.

Also, to qualify for MA-P/SDA, the 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 that claimant meets the severity and duration requirements under the *de minimus* test.

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 under SSI Listings 13.01. 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 last worked as a finish carpenter for a building contractor. Based on the medical evidence of record, claimant is able to return to his previous work as a carpenter. The Hayes Green Beach physician who examined claimant, did not state that he was totally unable to work.

Based on the medical evidence of record, claimant is able to return to his previous work as a finish carpenter.

Claimant does not meet 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. The medical evidence shows claimant is able to perform as a ticket taker for a theater, as a parking lot attendant, as a light janitor, or as a greeter for [REDACTED].

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant currently performs an extensive number of activities of daily living, and is computer literate.

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

The medical records established that many of claimant's impairments are related to excessive alcohol consumption, against medical advice.

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

PEM/BEM 260/261. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis, as described above.

Accordingly, the department's denial of claimant's MA-P/SDA 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 22, 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:

