

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-37869

Issue No: 2009

Case No: [REDACTED]

Hearing Date:

July 7, 2010

Calhoun 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 7, 2010, in Battle Creek. The claimant personally appeared and testified under oath.

The department was represented by Alan Sage (FIM).

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/retro applicant (April 15, 2010) who was denied by SHRT (June 16, 2010) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for January, February, and March 2010.

- (2) Claimant's vocational factors are: age--57; education—11th grade; post high school education—studied concrete installation to become a journeyman; work experience—concrete finisher (for three years).
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2001 when he worked as a concrete finisher.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Heart attack;
 - (b) Kidney dysfunction;
 - (c) Liver dysfunction;
 - (d) Shortness of breath (SOB); and
 - (e) Short term memory loss.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (June 16, 2010)

Claimant was admitted in 4/2010 due to a drug overdose and syncope. He was intubated and placed on a ventilator. He had acute renal failure and acute liver failure (page 29). Claimant had recently been incarcerated for illegal substances and drug use and was on parole. His condition improved and he was discharged. His final diagnoses included acute kidney injury secondary to acute tubular necrosis secondary to rhabdomyolysis, acute respiratory failure—improved, hypocalcemia, hyponatremia--corrected, hypokalemia--corrected, probable acute non-ST elevation myocardial infarction, thrombocytopenia, history of Hepatitis C and recreational drug use with intravenous amphetamines (page 24).

In 5/2010, the claimant had a diagnosis of Hepatitis C. He was 5'7" and 212 pounds. His blood pressure was 123/83 (page 40). He had a large lipoma in the occipital area. His breath sounds were decreased. Cardiovascular examination was within normal limits. He had tenderness in the right lower quadrant but no mass. His musculoskeletal and neurological examinations were within normal limits. He had slow mentation (page 39).

ANALYSIS:

The claimant has a history of substance abuse and was admitted in 4/2010 due to a drug overdose. His condition improved with treatment. In 5/2010, he had a large lipoma and decreased breath sounds. He had some abdominal tenderness. His mentation was slow.

* * *

- (6) Claimant lives with his spouse and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, mopping, vacuuming (sometimes), laundry and grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant received in-patient hospital treatment in 2010 for heart dysfunction.
- (7) Claimant has a valid driver's license and drives an automobile approximately four times a month. He is able to walk one and one-half mile and does so approximately 3 times a week. Claimant smokes approximately four cigarettes a day and reports that he does not drink alcohol or use street drugs.
- (8) The following medical records are persuasive:
 - (a) A May 12, 2010 Medical Examination Report (DHS-49) was reviewed. The physician provided the following impressions:
 - (1) Current diagnosis: Hepatitis C. Large lipoma occipital. Diminished breath sounds; and slow mentation.
 - (2) The physician states that claimant is able to lift normally; he is able to stand and/or walk less than two hours in an eight-hour day. There are no limitations on his ability to perform simple grasping, reaching, pushing-pulling or fine manipulating. There are no limitations on claimant's ability to use foot/leg controls.
- (9) Claimant alleges a disabling mental impairment based on his diagnosis of slow mentation. There are no probative psychiatric/psychological reports in the record. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

- (10) Claimant alleges a combination of disabling physical impairments: large lipoma on face, diminished breath sounds, and Hepatitis C. The probative medical evidence does not establish that claimant's combination of impairments are acute and expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do establish that claimant's slow mentation will prevent him from performing work that requires a high level of intellectual functioning. None of the internists who evaluated claimant reported that he was totally unable to work. At this time, however, there is no probative medical evidence to establish a severe disabling physical condition that totally precludes all sedentary work activities.
- (11) Claimant recently applied for federal disability benefits (RSDI/SSI) with the Social Security Administration. His application 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).

"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).

The department decides eligibility issues arising out of mental impairments using the following standards:

(a) Activities of Daily Living.

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) Social Functioning.

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) Concentration, Persistence and Pace:

...**Concentration, persistence or pace** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

(d) Sufficient Evidence:

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) Chronic Mental Impairments:

...**Chronic Mental Impairments:** Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(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. BEM 260/261. "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 a Listing.

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 cement finisher. This was medium work.

Because of claimant's history of renal failure and acute liver failure, he has chronic fatigue. These conditions prevent claimant from returning to his prior work as a cement finisher.

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 alleges disability based on a mental impairment: slow mentation. There is evidence in the record that claimant has mental slowness, which would consequently prevent him from performing work that requires intense mental concentration. Unfortunately, the medical evidence of record does not substantiate that claimant's current mental impairment (mental slowness) totally precludes all work activity. The physician who submitted the Medical Examination Report (DHS-49) dated May 12, 2010 did not state claimant was totally unable to work based on his mental slowness.

Second, claimant alleges disability based on status post heart attack, kidney dysfunction, liver dysfunction and shortness of breath. The medical evidence of record does substantiate that claimant was treated for the above enumerated physical impairments. However, the medical evidence of record does not substantiate that claimant's current physical impairments, taken collectively totally preclude all work activity. The physician who prepared the Medical Examination Report (DHS-49) did not state that claimant was totally unable to work based on the combination of his physical impairments.

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 drives an automobile approximately four 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 Wal-Mart.

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 application for MA-P. 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 application based on Step 5.

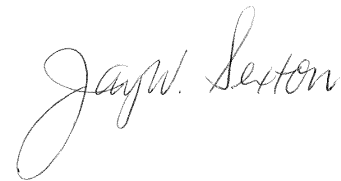
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does not meet the MA-P disability requirements under BEM 260.

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

Therefore, 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: August 16, 2011

Date Mailed: August 16, 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

2010-37869/JWS

cc:

