

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: 2010-39687  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 28, 2010  
Kalamazoo 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 three-way telephone hearing was held on July 28, 2010, in Kalamazoo. The claimant did not appear for the hearing and did not testify. He was represented by [REDACTED].

The Kalamazoo County DHS was represented by Peggy Shobowala-Benson (ES); Calhoun County DHS was represented by Ashley Monroe (ES).

By agreement of the parties, the record closed on July 28, 2010. Since no sworn testimony was presented by claimant, [REDACTED] requested a D&O based on the medical evidence of record.

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/SDA retro applicant (February 4, 2010) who was denied by SHRT (June 29, 2010) due to insufficient medical evidence. Claimant requested retro MA for December 2009.

(2) Claimant's vocational factors are: age--50; education--11th grade; post high school education--unknown; work experience--factory work and self-employed handyman.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a laborer at [REDACTED] in [REDACTED].

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

- (a) Myocardial infarction;
- (b) Shortness of breath;
- (c) Cervical stenosis;
- (d) Arthritis;
- (e) Edema;
- (f) Depression;
- (g) Social phobia;
- (h) Nicotine dependence; and
- (i) Chronic low back pain.

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

**OBJECTIVE MEDICAL EVIDENCE (June 29, 2010)**

**ANALYSIS:**

The medical evidence is insufficient to adequately assess all physical complaints, specifically musculoskeletal complaints.

RECOMMENDATION:

Additional medical information is suggested to assess the severity of the claimant's impairment(s).

\* \* \*

(6) Claimant performs the following Activities of Daily Living (ADLs): unknown. Claimant was hospitalized at [REDACTED] for a left heart catheterization with coronary artherectomy and coronary stent placement.

(7) Claimant's driver's license status is unknown. Claimant's computer literacy is unknown.

(8) The following medical records are persuasive:

(a) A [REDACTED] medical report was reviewed. The Ph.D. psychologist reported the following complaints and symptoms:

[REDACTED] I had a heart attack and had a stent put in. I needed help with the bills and I applied for Medicaid and they said I needed to apply for disability in order to get Medicaid. I have a lot of medical problems. I have cervical stenosis and cirrhosis of the spine. It's not all completely diagnosed, because I have no insurance and the clinic that I go to cannot afford to send me to the MRI's and other tests I need. With the cervical stenosis, the vertebrate gets inflamed and it pinches the nerves in the spinal cord. It's very painful. I have days where I can't get out of bed or even turn over on my side. I have chest pains frequently and I can't get used to taking the medications. I can't even tolerate the pain pills that they give me. I take them maybe once a month instead of every six hours. It's just like everything else in my life, and I'm not dependable. I've never been much on medication. Given my circumstances, I guess the stress is there.

There's anger and depression that has come with all this. I've been depressed since the heart attack. I have been depressed before and was being treated for depression in the mid-90's. I am nervous wreck around other people. It used to be just large groups, but now it's gotten to the point

where I don't like to be around everybody and I'm a nervous wreck. I used to have panic attacks real bad, but I haven't had one in a while. I know people just look down at me and I constantly think about that and know what they are thinking and I am just a nervous wreck.'

\* \* \*

**Work:**

[REDACTED]. 'I was there through a temporary service and the company was shutting down and only needed people until they moved to another state. Before that, I was just working odd jobs here and there. Nothing much. With a felony record it's almost impossible to get a job anymore.'

**MENTAL STATUS:**

Patient presented with adequate contact with reality. He appeared anxious about disclosing information and presented as somewhat lethargic with little eye contact. Despite his anxiety, he was cooperative throughout the evaluation. There appeared to be no tendency or exaggerating or minimizing symptoms.

**ADDITIONAL INFORMATION:**

The patient presented with a severe, recurring depressive disorder. It appeared that he has a previous history of a severe depressive episode and his current symptoms also appeared severe. He endorsed symptoms that included significantly depressed mood, loss of motivation, isolation, loss of interest, anger/agitation, sleep and appetite disturbances and feelings of hopelessness and helplessness. This patient also presented with symptoms of a Social Phobia, which include excessive anxiety, and fear of scrutiny by others that occur when he is in social situations and result in social isolation. He often feels that others are critiquing him and thus isolates, reporting a limited support system and little contact with others. He presented with avoidance tendencies and appeared to withdrawal from close relationships. His anxiety and depressed mood were evident through the evaluation.

\* \* \*

DIAGNOSIS:

AXIS I--Major depressive disorder, recurrent, severe without psychotic features; social phobias; nicotine dependence.

AXIS V--GAF-50.

The Ph.D. psychologist did not report that claimant is totally unable to work.

- (b) A [REDACTED] discharge summary was reviewed.

The physician provided the following assessment:

- (1) Anterior wall ST elevation myocardial infarction;
- (2) Status post catheterization with percutaneous coronary intervention to the LAD;
- (3) Paroxysmal atrial fibrillation;
- (4) Hypertension;
- (5) Tobacco use;
- (6) Preserved left ventricular function with an ejection fraction of 60%.

\* \* \*

The [REDACTED] internist did not state that claimant was 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. The clinical evidence provided by the [REDACTED] psychologist shows the following diagnoses: Axis I--major depressive disorder, recurrent, severe without psychotic features; social phobia; nicotine dependence. Axis V--GAF--50.

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has the following impairments:

status post myocardial infarction; status post catheterization with percutaneous coronary intervention; paroxysmal atrial fibrillation; hypertension; and tobacco abuse.

(11) Claimant thinks he is eligible for MA-P because he has cervical stenosis, a recent heart attack with a stent and chronic back pain.

(12) Claimant's recent status with the Social Security Administration (SSA) is unknown.

### CONCLUSIONS OF LAW

#### CLAIMANT'S POSITION

Claimant's position is summarized in an [REDACTED] hearing request as follows:

Claimant was hospitalized at [REDACTED] [REDACTED] (for anterior wall ST elevation MI status post left heart catheterization with coronary intervention (stent) to the LAD. Claimant has a remarkable history for hypertension and paroxysmal atrial fibrillation, and tobacco abuse.

\* \* \*

#### DEPARTMENT'S POSITION

The department thinks that claimant's current medical evidence is insufficient to establish disability. The department recommends that claimant obtain additional medical evidence to assess the severity of claimant's impairments.

#### 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).

To determine to what degree claimant's mental impairments limit his ability to work, the following regulations must be considered:

(a) **Activities of Daily Living (ADLs).**

**...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 or 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. 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, pages 8 and 9.

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 the Step 1 eligibility test.

**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.

Also, to qualify for MA-P, 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 found that the medical evidence of record is insufficient to adequately address all physical complaints, specifically claimant's musculoskeletal complaints.

Therefore, claimant does not meet the Step 2 eligibility test and claimant has failed to establish a disability which qualifies him to receive Medicaid at this time.

In short, this Administrative Law Judge is not persuaded that claimant is totally unable to work based on his heart dysfunction, back dysfunction, spinal dysfunction (with pain) and his depression.

Based on the SHRT evaluation of claimant's medical evidence as well as a careful review of the medical documents in the record, the department correctly denied claimant's MA-P application based on insufficient evidence.

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 2 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: August 23, 2010

Date Mailed: August 23, 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:

