

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: 2010-43290
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 18, 2010
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 August 18, 2010, in Allegan. The claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Marvin Duell (General Services Program Manager).

By agreement of the parties, the record closed on August 18, 2010.

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 (August 14, 2009) who was denied by SHRT (July 26, 2010) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.14 as a guide. Claimant requested retro MA for May, June, and July 2009.

(2) Claimant's vocational factors are: age--58; education--9th grade; post high school education--none; work experience--road maintenance laborer for [REDACTED] Solid Waste Laborer and fast food assistant.

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

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

- (a) Status post right shoulder fracture (no surgery);
- (b) Bone and back pain;
- (c) Separated shoulder;
- (d) Poor vision and hearing;
- (e) Pneumonia;
- (f) Heart dysfunction;
- (g) Elevated bilirubin;
- (h) Crohn's disease;
- (i) Mental health issues;
- (j) Immune disorder.

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

OBJECTIVE MEDICAL EVIDENCE (July 26, 2010)

MEDICAL SUMMARY:

Claimant is alleging disability secondary to bone and back pain, separated shoulder, poor vision and hearing, pneumonia, heart, elevated bilirubin, Crohn's disease, mental health issues and immune disorder. There is no evidence of limitations associated with alleged poor vision and hearing or immune disorder. There is

a history of separated shoulder, injury involving the neck and Crohn's disease; however, these injuries occurred in the 1990's and there are no current limitations or treatment. The claimant was in the hospital (page 47), for pneumonia. Claimant also had evidence of demand ischemia secondary to pneumonia which resolved with treatment of pneumonia. There are purchased evaluations, pages 20 and 42. The psychiatric evaluation notes the claimant stating that he is unable to work secondary to physical conditions; it is also noted that there are mild limitations on the claimant's ability to perform work-related tasks. The physical examination notes normal findings but does also note the reported history as given by the claimant.

ANALYSIS:

The medical evidence supports that the claimant would reasonably be limited to performing tasks of medium exertional level of simple and repetitive tasks.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, laundry, and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. He does wear his arm in a sling approximately twice a month. Claimant was hospitalized once in 2009 to obtain treatment for pneumonia.

(7) Claimant has a valid driver's license and drives an automobile approximately once a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

The [REDACTED] Decision accurately summarizes claimant's probative medical evidence. See Paragraph #5 above.

(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 a specific mental impairment as the basis for his disability. The consulting Ph.D. psychologist provided the following diagnoses: Adjustment

disorder with mixed anxiety, depressed mood, and ADHD, Axis V/GAF = 55 (moderate). A severe mental impairment has not been clinically established.

(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 medical records do show the following diagnoses: pneumonia, elevated bilirubin, Crohn's disease and immune disorder. The consulting physician, who examined claimant, did not think that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits from Social Security Administration (SSA). The impairments alleged are the basis for claimant's Social Security claim, and the same as those presented here. Social Security denied claimant's SSI application. The claimant filed a timely appeal.

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).

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 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.

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.

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 claimant meets the severity and duration requirements using the *de minimus* test.

Therefore, 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.

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 road repair laborer for the [REDACTED]. This is medium work.

The Medical/Vocational evidence of record shows that claimant has a moderate shoulder impairment and neck dysfunction. He also has back pain.

Based on the medical evidence of record, claimant is not able to return to his previous work as a road repair laborer because he is unable to do the standing, lifting and shoveling required of his work as a highway repair laborer.

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. 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. Notwithstanding claimant's moderate physical limitations (a separated shoulder, back pain and a history of pneumonia), claimant is able to perform simple unskilled work, including work as a ticket taker for a theater, as a parking lot attendant, as a janitor, or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to his return to work was his neck, back and shoulder 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 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 clinically documented physical impairments. Claimant currently performs several activities of daily living and drives an automobile once a month. This means that claimant is able to perform unskilled sedentary work (SGA).

Although claimant's pain medications do not totally eliminate his pain, they do provide some relief.

It should be remembered that even though claimant has several significant physical impairments, he does have demonstrable residual work capacities. He is able to perform a significant number of activities of daily living, he drives an automobile and he visits with his children by telephone.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments.

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

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 5 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: October 22, 2010

Date Mailed: October 25, 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:

