

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████  
████████████████████  
████████████████████

Reg. No: 2010-54167  
Issue No: 2009  
Case No: ██████████  
Load No: ██████████  
Hearing Date:  
November 18, 2010  
Ingham 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 November 18, 2010, in Lansing. The claimant personally appeared and testified under oath. The claimant was represented by ██████████ from ██████████.

The department was represented by Jeanne Lugo (Lead Worker).

By the agreement of the parties, the record closed on November 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 (April 21, 2010) who was denied by SHRT (September 22, 2010) based on claimant's failure to establish an

impairment which meets the department's severity and duration requirements.

- (2) Claimant's vocational factors are: age--41; education--high school diploma; post high school education--six semesters at [REDACTED] (majoring in travel and tourism); work experience--lab tech at [REDACTED] pharmacy, certified nurse aide at a long-term care facility.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a lab tech for [REDACTED].
- (4) Claimant has the following unable-to-work complaints:
  - (a) Type II diabetes;
  - (b) Hypertension;
  - (c) Enlarged heart; and
  - (d) Congestive heart failure.
- (5) SHRT evaluated claimant's medical evidence as follows:

**OBJECTIVE MEDICAL EVIDENCE (September 22, 2010)**

**MEDICAL SUMMARY:**

Claimant was admitted in 3/10 due to recurrent, chronic pericardial effusion. He had previously been admitted in 2/10 for pericardial effusion. He had a chest tube in place at that time, but it had been removed when the drainage had decreased (page 7). A CT scan of the chest in 3/10 showed pericardial effusion and left pleural effusion. An electrocardiogram showed minimal pericardial effusion. The cardiovascular doctor felt his pericardial effusion was minimal and he was not dyspneic throughout his hospital stay. He was discharged (page 8).

Claimant's admission in 2/10 indicated his pericarditis was likely viral with a large pericardial effusion. His electrocardiogram in 2/10 showed his ejection fraction was between 55%-60%.

**ANALYSIS:**

Claimant was admitted in 2/10 and 3/10 due to pericardial effusion. In 2/10 they felt his pericarditis was likely viral. His echocardiogram showed his ejection fraction was basically within normal limits, at 55%-60%. He had a chest tube to

drain the fluid at that time. He was admitted again in 3/10 due to shortness of breath but did not require a chest tube as his pericardial effusion was minimal.

\* \* \*

- (6) Claimant lives with his partner and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant received inpatient hospital services twice in 2010 to obtain treatment for pericardial effusion.
- (7) Claimant has a valid driver's license and drives an automobile approximately 15 times a month. Claimant is computer literate and owns his own computer.
- (8) The following medical records are persuasive:
  - (a) A [REDACTED] report was reviewed. The [REDACTED] contains the following assessment/plan:
    - (1) Claimant is a 40-year-old man with difficulty in breathing, which is most likely secondary to pericardial effusion secondary to viral infection.
    - (2) Chest pain most likely secondary to number 1;
    - (3) Hypertension, stable;
    - (4) Diabetes;
    - (5) Glucose leukocytosis;
    - (6) Venous thrombosis.
  - (b) A March 11, 2010 Medical Examination Report (DHS-49) was reviewed.

The reporting physician provided the following diagnoses:

Diabetes, hypertension; tachycardia; recurrent/chronic pericardial effusion.

The physician states that claimant will be unable to work until he recovers from his pericardial effusion.

- (9) There are no probative psychological reports in the record. Claimant does not allege a psychological impairment as the basis for his disability.
- (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 a required period of time. Claimant's pericardial effusion, hypertension, and diabetes have been successfully treated. These conditions do not preclude claimant from performing normal work activities.
- (11) Claimant is in the process of applying for SSI benefits from Social Security.

### **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, 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 meets the SSI definition of severity/duration. Claimant must establish an impairment which is expected to result in death has existed for 12 months and totally prevents all basic 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).

Because the severity/duration requirement is a *de minimus* requirement, 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 the Listings.

The medical evidence of record does not show that claimant qualifies for MA-P under any of the 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 lab tech for CVS pharmacy. This was semi-skilled sedentary work.

The Medical/Vocational evidence of record does not establish any impairments which totally prevent claimant from returning to his past light semi-skilled work as a lab tech for a drug store.

Therefore, 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.

**Claimant has the burden of proof** to show by a preponderance of the medical evidence in the record that his combined impairments meet the department's definition of disability for MA-P purposes.

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

Second, claimant alleges disability based on his recent chronic pericardial effusion in combination with his diabetes, shortness of breath and chronic back pain. However, the

record does not establish that claimant is totally unable to work based on his combination of impairments.

It should be noted that claimant's recent chronic pericardial effusion was successfully treated at the hospital.

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 list of activities of daily living, has an active social life with his live-in partner, drives an automobile approximately 15 times a month and is computer literate.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled/semi-skilled sedentary work (SGA). In this capacity, he is physically able to work as a ticket taker for a theater, as a parking lot attendant, as a greeter for [REDACTED], and as a lab tech for a drug store.

Based on this analysis, the department correctly denied claimant's MA-P application, based on Step 5 of the sequential analysis, as presented above.

**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 260.

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: December 8, 2010

Date Mailed: December 8, 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:

