

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: 2010-5550
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 15, 2009
Shiawassee 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 December 15, 2009, in Owosso.

The department was represented by Beverly Nehls (FIM) and Sherri Bupp (ES).

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) 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 (August 25, 2009) who was denied by SHRT (November 12, 2009) based on claimant's ability to perform light work. 20 CFR 416.967(b). SHRT relied on Med-Voc Rule 202.19 as a guide. Claimant requests retro MA for May, June, and July 2009. The disputed eligibility period is August 25 to December 15, 2009.

(2) Claimant's vocational factors are: age--44; education--11th grade; post high school education--none; work experience--cement finisher for 33 years and construction laborer

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when he worked as a cement finisher.

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

- (a) Shortness of breath (SOB);
- (b) Chronic fatigue;
- (c) Back pain;
- (d) Joint pain;
- (e) Knee pain;
- (f) Osteoarthritis;
- (g) Family doctor says: "Do not work."

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

OBJECTIVE MEDICAL EVIDENCE (November 12, 2009)

SHRT decided that claimant was able to perform normal work activities (light unskilled work). SHRT evaluated claimant's impairments using SSI Listing 4.01. SHRT decided claimant does not meet any of the applicable SSI listings. SHRT denied disability based on 20 CFR 416.968(a) and Med-Voc Rule 202.19 due to claimant's ability to perform light work.

(6) Claimant lives with a lady friend. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping (sometimes), vacuuming, and laundry. Claimant uses a cane approximately 12 times a month. Claimant does not use a walker, wheelchair, or shower stool. Claimant does not wear braces.

Claimant received inpatient hospital care in 2008 to obtain treatment for a myocardial infarction and coronary artery disease.

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

(8) The following medical records are persuasive:

(a) A September 9, 2009 Medical Examination Report (DHS-49) was reviewed. The family physician provided the following analyses:

Status post myocardial infarction, dyslipidemia and low back pain.

The family physician states that claimant is able to lift less than ten pounds occasionally. Claimant is able to stand/walk less than two hours in an eight-hour day. He is able to sit about six hours in an eight-hour day. Claimant has normal use of his hands/arms; claimant has normal use of his feet/legs.

The doctor reports a history of low back pain.

(b) A February 12, 2009 narrative physical examination was reviewed. The [REDACTED] internist provides the following background:

The [REDACTED] consulting internist provided the following complaints:

- (1) Recent myocardial infarction;
- (2) Coronary artery disease;
- (3) COPD;
- (4) Alcohol abuse;

The consulting internist provides the following history:

Claimant is a 44-year-old white male who has an 8th grade education. He worked as a cement finisher. He builds roads, sidewalks, etc. It is very hard manual work. He did this most of his life until August 24 when he started having chest pain, which he thought was a cold. He ultimately went to see a pharmacist to see if he could get something

for his cold. The pharmacist checked his blood pressure and it was markedly elevated. He sent him to the ER. At that time they found that he was having a heart attack and sent him to [REDACTED]. He remained at [REDACTED] for five days. They did a cardiac catheterization on him. They found that he had a significant occlusion of the coronary arteries. They did a PTCA with stent placement. He also suffered a major heart attack.

He has been a drinker and a smoker most of his life. He smokes approximately two packs of cigarettes a day. He is now trying to cut down on his smoking. He has also cut down on his drinking. Because he has an 8th grade education, he cannot do any other work except manual labor. Since the heart attack he really cannot do that anymore.

* * *

The [REDACTED] consulting internist provided the following impressions:

- (1) Uncontrolled essential hypertension;
- (2) Coronary artery disease;
- (3) Status post angioplasty with stent Placement probably in the circumflex Artery;
- (4) COPD, moderately severe, secondary To cigarette smoking;
- (5) Hepatomegaly, secondary to previous acute Chronic alcoholism.
- (6) Hyperlipidemia.

I feel that this patient will need lifelong medication therapy and care because of multiple comorbidities. His blood pressure is not controlled. He will need continual visits to an internist and cardiologist.

* * *

- (c) An [REDACTED] discharge summary was reviewed.

The physician provided the following discharge diagnoses:

- (1) Non-ST elevation myocardial infarction;
- (2) Coronary artery disease;
- (3) Hypertension;
- (4) Tobacco abuse.

(9) Claimant does not allege disability based on a mental impairment. Claimant did not submit a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) Claimant alleges disability based on a combination of physical impairments (shortness of breath, fatigue, back pain, knee pain, and osteoarthritis). A recent [REDACTED] internal medicine consultation provides the following diagnoses: (1) uncontrolled hypertension; (2) coronary artery disease; (3) status post angioplasty with stent placement; (4) COPD, moderately severe, secondary to cigarette smoking; (5) Hepatomegaly, secondary to previous acute and chronic alcoholism; (6) Hyperlipidemia. The consulting internist thinks claimant's physical condition would improve if he had abstained from cigarettes and alcohol.

(11) Claimant recently applied for federal disability (SSI) benefits. Social Security denied his application. Claimant has filed timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA benefits based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has a Residual Functional Capacity (RFC) to perform unskilled light work.

The department thinks that claimant's medical condition may be consistent with past relevant work.

The department reviewed claimant's eligibility using SSI Listing 4.01; claimant does not meet the applicable listing.

The department denied eligibility based on Med-Voc Rule 202.19, as a guide.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;

- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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 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 disabled for MA-P/SDA purposes.

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 the Step 1 disability test.

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 at least 12 months and totally prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

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 department did evaluate claimant's impairments using SSI Listing 4.01; claimant does not meet any of the applicable listings.

Therefore, claimant does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked as a cement finisher and construction laborer. This work was heavy work.

The medical evidence of record establishes that claimant is unable to do the lifting and standing required from his previous work as a cement finisher.

Since claimant is no longer able to return to his work as a cement finisher, he does meet the Step 4 disability test.

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/SDA purposes.

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

Second, claimant alleges disability based on a combination of physical impairments. Claimant's multiple impairments do prevent him from performing heavy lifting and continual standing. Although claimant is precluded from heavy lifting and continual standing, the evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to his return to work is his back, joint and knee pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is profound and 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 combination of impairments. Claimant performs an extensive number of activities of daily living, has an active social life with his live-in partner and drives an automobile approximately eight times a month. Claimant is mentally alert and was able to present himself confidently at the hearing.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, 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 [REDACTED]. Work of this type would afford claimant a sit-stand option in the workplace.

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

Finally, the Administrative Law Judge is not able to award disability benefits to claimant because he is acting against medical advice by continuing to smoke and consume hard liquor. Claimant has been counseled by the doctors in the record to discontinue both of these long-standing abusive activities because they are injurious to his health. Claimant has not followed the advice of his doctors.

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 260/261.

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: April 19, 2010

Date Mailed: April 20, 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

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