

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-55861

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

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 [REDACTED] from [REDACTED].

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

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 (June 11, 2009) who was denied by SHRT (October 7, 2010) based on claimant's ability to perform simple unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

- (2) Claimant's vocational factors are: age--37; education--high school diploma (special education); post high school education--none; work experience--truck loader for [REDACTED], parts grinder for [REDACTED] and kitchen helper at [REDACTED].
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when he worked for [REDACTED] unloading trucks.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Back dysfunction;
 - (b) Leg dysfunction;
 - (c) Bilateral leg numbness;
 - (d) Nerve disorder in right hand; and
 - (e) Poor short-term memory.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (October 7, 2010)

Medical Summary

Claimant was admitted in 3/09 due to right foot cellulitis. He also had a diagnosis of obesity and hydrocephalus since age of 3 months, status post shunt placement (page 15).

Claimant was admitted in 9/09 for ventricular peritoneal shunt dysfunction (records from DDS).

In 2/10, claimant was 70.5 inches and 283 pounds. He had some mild paralumbar discomfort, but he had full range of motion of the neck, back, shoulders, elbows, wrists, hands, hips, knees, ankles and feet. Straight leg raise was negative. There was no overt motor or sensory abnormality. Deep tendon reflexes were +1 to +2 symmetrical (page 9).

A psychological evaluation dated 2/10 showed the claimant's IQs were 71 verbal, 73 performance and 69 full scale (page 4). The claimant had very bad personal hygiene. He exhibited patterns of under-socialization and seemed to have very limited social awareness and social judgment. There was no evidence of a thought disorder. He did exhibit limited capabilities for complex reasoning, anticipatory thinking and problem solving. There was no evidence of hallucinations, delusions or obsessions (page 5). Diagnoses included cognitive disorder, depressive disorder, reading disorder,

mathematics disorder and borderline intellectual functioning (page 7).

* * *

- (6) Claimant lives in a shelter and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing (uses a chair), light cleaning, mopping, vacuuming, and laundry. Claimant uses a cane 30 times a month. He does not use a walker, wheelchair or shower stool. He does not wear braces. Claimant was hospitalized twice in 2009. His most recent hospitalization was for migraine headaches and intracranial pressure.
- (7) Claimant has a valid driver's license but does not drive an automobile. Claimant is not computer literate.
- (8) The following medical records are persuasive:
 - (a) A February 12, 2010 consultative psychological evaluation was reviewed.

The consulting psychologist provided the following assessment:

The results of this evaluation, including the results of the psychological instruments, standardized tests, and [REDACTED] presentation throughout the evaluation, indicate that he has a lifelong history of illiteracy and reduced cognitive functioning. Claimant stated that he was in special education throughout his school years. At the time of this evaluation, he exhibited continuing patterns of severe illiteracy and exhibited learning disorders in reading and arithmetic.

* * *

Currently, claimant appears to have **moderately impaired** capacities to understand, retain, and follow simple instructions and complete simple tasks. He appears to have **moderately impaired** capacities to understand, retain, and follow simple instructions and to perform and complete simple tasks. He appears to have **moderately impaired** capabilities to interact appropriately and effectively with coworkers and supervisors, and to adapt to changes in the work setting. It is suspected that claimant's limitations

would result in **Moderately Impaired** capacity to do work-related activities.

* * *

The consulting psychologist provided the following diagnostic impressions:

Axis I: Cognitive disorder; depressive disorder; reading disorder; and mathematics disorder.

Axis V: GAF--50.

NOTE: The consulting Ph.D. psychologist did not state that claimant is totally unable to work.

- (b) A [REDACTED] narrative report was reviewed. The physician provided the following history:

* * *

Claimant states he has had years of episodic numbness in his right arm and lower legs. What he described as 'wobbly legs' and episodes of nighttime unexplained urinary incontinence.

* * *

Occupational History:

Claimant did seasonal work for one month in [REDACTED], working for [REDACTED]. He had a janitorial job from 2002 until 2005 but left when the company closed.

The physician provided the following internal medicine assessment:

Status post cerebral shunt. Review of [REDACTED] neurosurgical notes in [REDACTED] would be useful.

* * *

NOTE: The consulting [REDACTED] physician did not report that claimant is totally unable to work.

- (9) The probative medical evidence does not establish an acute mental impairment, expected to prevent claimant from performing all customary work functions for the required period of time. The consulting Ph.D. psychologist provided the following diagnoses:

Cognitive disorder, depressive disorder, reading disorder, and mathematics disorder.

He has an Axis V/GAF score of 50. The consulting psychologist did not state that claimant is totally unable to work.

- (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 the required period of time. The [REDACTED] consulting physician provided a diagnosis of status post cerebral shunt. The consulting internist did not state that claimant was totally unable to work.
- (11) Claimant recently applied for SSI benefits with the Social Security Administration. Social Security denied his application. 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 the 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 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 meets the definition of severity/duration.

Claimant must establish an impairment which is expected to result in death, has existed for east 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). The severity/duration requirement is a *de minimus* requirement. Based on the *de minimus* standard, SHRT decided 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.

However, SHRT determined that claimant does not meet any of the applicable 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 package handler/truck unloader for [REDACTED]. This was medium work.

The medical evidence of record establishes that claimant has numbness in his legs and experiences chronic falls. Claimant's current physical condition prevents him from returning to his previous medium/light work as a package handler for [REDACTED].

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 preponderance of the medical evidence in the record that his impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on poor short-term memory. However, the evaluation provided by the consulting psychologist indicates that claimant's Axis V/GAF score is 50 (moderate). Also, the consulting psychologist states that claimant has moderately impaired capabilities to understand, retain and follow simple instructions and to perform and complete simple tasks. Claimant also appears to have moderately impaired capabilities to interact appropriately with coworkers and supervisors. However, the Ph.D. consulting psychologist did not state that claimant is totally unable to work.

Second, claimant alleges disability based on his back dysfunction, leg dysfunction, and a nerve disorder in his right hand. However, the record does not establish that claimant is totally unable to work based on these impairments. The consulting physician from [REDACTED] provided a diagnosis of status post cerebral shunt. The consulting physician did not state that claimant is totally unable to work.

Finally, claimant testified that a major impediment to his return to work was his ability to walk and stand secondary to chronic numbness in his legs. Unfortunately, evidence of chronic numbness/pain, alone, is insufficient to establish disability for MA-P purposes.

The Administrative Law Judge concludes that claimant's testimony about his leg numbness/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, both mental and physical. Claimant currently performs an extensive list of activities of daily living, has an active social life with his children and successfully lives in a local shelter.

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 physically able to work as a ticket taker for a theater, as a parking attendant, and as a greeter for [REDACTED], and as a janitor doing light work.

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

It should be noted that even though claimant has several significant mental impairments, does have demonstrable residual work capacities. Claimant is computer literate, has a valid driver's license, and performs a significant number of activities of daily living.

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.

Accordingly, the department's denial of claimant's application (based on Step 5) is, hereby, AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 7, 2010

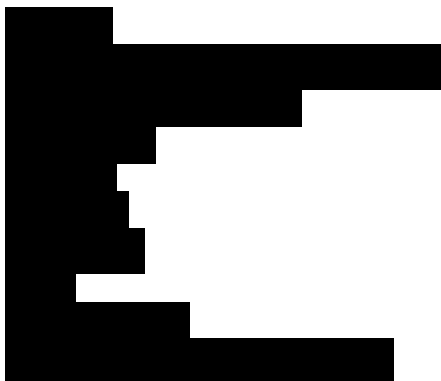
Date Mailed: December 7, 2010

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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