

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

IN THE MATTER OF:
[REDACTED]
[REDACTED]
Onaway, MI 49765

Reg. No: 2010-7341
Issue No: 2009
Case No: [REDACTED]
Load No:
Hearing Date:
April 7, 2010
Presque Isle 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 April 7, 2010, in Rogers City. The claimant personally appeared and testified under oath.

The department was represented by Robin Patterson.

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 4, 2009) who was denied by SHRT (January 8, 2010) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.14 as a guide. Claimant requests retro MA for May, June, July and August 2009.

- (2) Claimant's vocational factors are: age--53; education—high school diploma; post high school education--none; work experience—self-employed truck driver and backhoe operator, logger and tree hauler.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when he worked as a self-employed truck driver.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Deep vein thrombosis;
 - (b) Ischemia in the left leg; and
 - (c) Coronary artery disease.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (January 8, 2010)

MEDICAL SUMMARY:

Claimant is alleging disability secondary to ischemic left leg, peripheral artery disease and coronary artery disease.

ANALYSIS:

The medical evidence of record provided by Administrative Hearings did not materially affect the previous decision. The documents provided related to surgery for a ruptured appendix.

OBJECTIVE MEDICAL EVIDENCE (November 25, 2009)

MEDICAL SUMMARY:

Claimant alleges disability secondary to ischemic left leg, peripheral artery disease and coronary artery disease. Claimant has a history of coronary artery disease, with note 7/2009 showing a need for left femoral thromboembolectomy. There are no significant limitations secondary to these conditions.

ANALYSIS:

Claimant does not have a disabling condition. The Social Security Administration made a recent decision, wherein it was determined that claimant retained the ability to perform light exertional tasks. The Social Security Administration

made a recent decision, wherein it was determined that claimant retained the ability to perform light exertional tasks. This opinion is supported as claimant was stable prior to his recent hospitalization in good and stable condition, with expectations for continued improvement.

* * *

- (6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping (sometimes), and vacuuming (sometimes), laundry and grocery shopping (sometimes). Claimant used a cane approximately 12 times a month. Claimant does not use a walker or wheelchair. Claimant uses a shower stool approximately 15 times a month. Claimant does not wear braces. Claimant received inpatient hospital care twice in 2009 for a burst appendix. Claimant received inpatient hospital care in 2010 for blocked arteries in his left leg.
- (7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant goes visiting approximately three times a month. He has visitors over approximately 15 times a month.
- (8) The following medical records are persuasive:
 - (a) A [REDACTED] [REDACTED] was reviewed. The physician provided the following impressions: Alleged impairments: blood clot left leg, numbness of left leg, polymyositis.

Limitations: Claimant statements: 'I cannot drive a truck or run equipment right now. I have barely any strength in my left leg right now. I doubt that I would be allowed to even drive a truck anymore because of my medical condition. I am required to lay down due to my condition and I get very tired very easily from the polymyositis.

OBSERVATIONS:

He was a very polite man who was quite hard of hearing, who attended the appointment with his mother. He exhibited difficulty standing and walking, with a noticeable dependence on a cane to walk with a limp. He did get into a standing position twice at a

very slow rate and lift to have trouble with his steadiness, once reaching and standing position. Good grooming.

ADLS:

Problems sleeping, takes care of personal needs. Does easy cooking. Not doing chores—not enough strength. He can only shop for a short period of time. He reads. He visits. He walks 100 feet, before resting. Claimant has MDI of ischemic left leg; status post surgical repair and has an appendectomy in 10/2009. Claimant's ADLs were completed on 8/27/2009—about seven weeks postop and his statements regarding functioning are credible (for seven weeks postop) and could reasonably be attributed to his MDI.

- (9) Claimant does not allege a severe mental impairment as the basis for his disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.
- (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 medical records do establish that claimant has the following impairments: Blood clot—left leg; numbness of left leg; polymyositis. None of the internists who evaluated claimant in 2009 reported that he was totally unable to work. The record does indicate that claimant is unable to climb ladders or stairs and unable to stand for an eight-hour shift. He is currently unable to drive a truck or run heavy equipment. At this time, however, there is no probative medical evidence to establish a severe disabling physical condition that totally precludes all sedentary work activities.
- (11) There is no information about claimant's recent applications for RSDI/SSI. There is no current information about whether claimant has applied for federal disability benefits (RSDI/SSI) with the Social Security Administration.

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis

and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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. 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. 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 has impairments which meet the SSI definition of severity/duration. Claimant must establish an impairment is expected to result in death, has existed for 12 months and/or totally prevents all current 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).

Using the *de minimus* standard, 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.

However, SHRT evaluated claimant's eligibility using SSI Listings 4.02/.12 and 5.01. SHRT decided that claimant does not meet any of the applicable Listings.

SHRT's evaluation and conclusion is hereby incorporated by reference.

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 truck driver and heavy equipment operator. This is heavy work. Because of claimant's combination of impairments, ischemic left leg, peripheral artery disease and coronary artery disease, he is not able to perform his previous work as a truck driver and heavy equipment operator. This means that claimant is unable to return to his previous work.

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 medical/psychiatric 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 the combination of physical impairments: ischemic left leg, peripheral artery disease and coronary artery disease. Unfortunately, the medical evidence of record does not substantiate that claimant's current physical impairments totally preclude all work activity. The internists who provided reports on claimant's physical condition did not state that he was totally unable to work.

Third, claimant alleges disability due to left leg 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 combination of impairments. Claimant currently performs many activities of daily living. He also drives an automobile 30 times a month. He has visitors over three times a month; he goes visiting 15 times a month.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform 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]

During the hearing, the claimant testified that a major impediment to return to work was. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Also, it is significant that there is no "off work" order from claimant's primary care physician in the record.

The department has established, by competent, material and substantial evidence on the record that it acted in compliance with department policy when it decided that

claimant was not eligible for MA-P. Furthermore, claimant did not meet his burden of proof to show the department's denial of his application was reversible error.

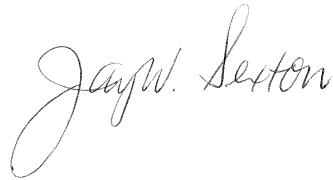
Accordingly, the department correctly denied claimant's MA-P application, based on Step 5 of the sequential analysis as presented above.

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 BEM 260.

Therefore, the department's denial of claimant's MA-P application is, hereby, AFFIRMED.

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 8, 2011

Date Mailed: July 11, 2011

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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cc:

