

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 20107667
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 14, 2010
St. Clair 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 January 14, 2010. in Port Huron. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED].

The department was represented by Jeanette Cates (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on January 26, 2010. Claimant waived timeline requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

ISSUES

1. Did claimant establish a severe mental impairment expected to preclude him from substantial 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) for 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 (November 17, 2008) who was denied by SHRT (December 3, 2009, & January 29, 2010) due to claimant's ability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requested retro MA for October, November, and December 2008.
2. Claimant's vocational factors are: age—43; education—10th grade; post high school education—none; work experience—worked as an engine room operator for [REDACTED] on a [REDACTED]. (No seaman's papers).
3. Claimant has not performed Substantial Gainful Activity (SGA) since 2001, when he was an engine room operator for the [REDACTED] on the Great Lakes.
4. Claimant has the following unable-to-work complaints:
 - a. Vomiting blood and abdominal pain;
 - b. Acute and chronic alcohol abuse;
 - c. Appendectomy, status quo appendectomy;
 - d. Hepatitis C;
 - e. Sclerosis of the liver;
 - f. Ephron left knee arthritis;
 - g. Ephron diarrhea; and
 - h. Low I.Q.
5. SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (JANUARY 29, 2010)

This claim was returned to the State Hearing Review Team (SHRT) by Administrative Hearings with newly submitted medical evidence and correspondence.

Claimant is alleging disability due to liver and stomach problems, bones, and mental capacity deficit. He is 43 years – with 9 years of education and no reported work history.

The claim was denied by the medical review team 05/2009 and by SHRT 12/3/2009.

SHRT evaluated claimant's eligibility using the Listings 5.01; 1.01; and 12.01.

SHRT decided that claimant was able to perform light unskilled work under 20 CFR 416.967(B). SHRT relied Med-Voc Rule 202.20.

6. Claimant 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, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant received inpatient hospital care in 2009, for appendicitis, hemorrhaging, hepatitis, and status quo appendectomy.
7. Claimant does not have a valid driver's license and does not drive an automobile. Claimant is a long time smoker and smokes approximately 8 cigarettes a day. Claimant is able to walk approximately 4 blocks.
8. The following medical records are persuasive:
 - a. [REDACTED]
progress note was reviewed.

The physician has provided the following history:

This is a 43 year old here today to discuss his test results. We did a quantitative hepatitis C. He does have 44,000 copies which have been lower than he had been in the past; however, his ammonia has gone up to 115 despite him taking 1 tablespoon twice a day of lactulose. His liver enzymes also mildly elevated and about the same level that had been for the last year.

OBJECTIVE:

On exam, he is alert and oriented x3. His weight is 186 pounds, which is stable and blood pressure is 110/60. He does have a jaundice type complexion; however, his bilirubin is only 3.6, which is improved for him. Abdomen is soft. There is no liver edge palpated. He probably has a cirrhotic liver.

ASSESSMENT:

1. Sclerosis;
2. Hepatitis C.

- b. A [REDACTED] progress report was reviewed.

The physician provided the following history:

This is a 43 year old who presents today for a routine check up. He is feeling well. He states his girlfriend thinks he is more yellow, however. He states he has stopped taking his lactulose for a while and that his stomach started to hurt more and he is back on that. He states he takes 2 swigs per day. It is liquid lactulose. He is supposed to be on a tablespoon twice a day.

OBJECTIVE:

On physical exam, his weight is 197 pounds, which is relatively stable for him. Blood pressure is 130/60. He has slight jaundice of the sclerae of his eyes, no more than usual, in my opinion. His skin has a sallow type complexion, but he states he has been out in the sun a lot. Soft palette does not show any jaundice. Lungs, there is diffuse wheezing on expiration, otherwise clear. Heart has regular rate and rhythm. S1 and S2 without murmur. Abdomen is soft. On deep inspiration, we can feel the liver edge 2 cm below the right costal margin. It is non-tender. No nodules. Bowel sounds are present in all 4 quadrants. Extremities are without edema.

ASSESSMENT:

1. Sclerosis;
2. Hepatitis C.

Note the examining physician did not say that claimant is totally unable to work.

9. Claimant does not allege a severe mental impairment as a basis for his disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49 D or a DHS-49 E to us to establish his mental residual functional capacity. At the hearing, claimant stated he had a low I.Q. There is no clinical evidence of this in the record.

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 required period of time. The medical records do establish that in October 2009, claimant was hospitalized due appendicitis and consequently under went an appendectomy. In addition, claimant has Hepatitis C. None of the physicians who have evaluated claimant in 2009 reported that he totally unable to work. At this time, there is no probative medical evidence to establish a severe disabling physical condition that totally precludes all sedentary work activities.
11. Claimant recently applied for federal disability benefits (RSDI) with the Social Security Administration (SSA). SSA denied his application. Claimant filed a timely appeal.
12. Claimant is a long time smoker. He continues to smoke, AMA. He continues to smoke against medical advice (AMA).

CONCLUSIONS OF LAW

Legal Base

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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/SDA purposes. PEM/BEM 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 is earning substantial income, he is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. PEM/BEM 260/261. 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 the 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 which is expected to resolve in death, has existed for 12 months and/or totally prevents all current work activities. 20 CFR 416.909. The

Also, to qualify for MA-P/SDA, 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 5.01, 1.01, and 2.01. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT's evaluation of the applicable SSI Listings is incorporated by reference.

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 was employed as engine room operator for the [REDACTED]. Since claimant's appendix dysfunction has been treated by an appendectomy; claimant's current impairments do not preclude him from returning to work as an engine room operator on a [REDACTED] ship. Since claimant is able to return to his prior work as an engine room operator, he 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 the medical/psychiatric 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 the following physical impairments:

Vomiting blood and abdominal pain, acute and chronic alcohol abuse, appendicitis, status post appendectomy, Hepatitis C, cirrhosis and left knee arthritis.

None of the recent reports from [REDACTED] have statements by the examining physician stating that claimant is unable to work.

Third, claimant alleges disability due to left knee arthritis and left knee pain. Claimant's left knee arthritis has not been convincingly documented in the current medical record. In addition, 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 credible and profound 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 combined impairments. Claimant currently performs numerous activities of daily living, including dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. In addition, claimant does some work in the yard and takes care of his dog. Claimant is able to walk approximately four blocks.

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 from a theater, as a parking lot attendant, and a greeter for [REDACTED].

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

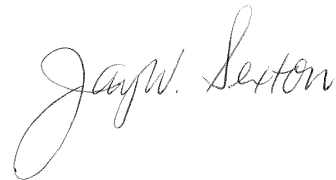
The department has established by, competent, material and substantial evidence on the record that it acted in compliance with department policy when it decided claimant was not eligible for MA-P/SDA. Furthermore, claimant did not meet his burden of proof to show that the department's denial of his application was reversible error.

Based on this analysis, the department correctly denied claimant's MA-P/SDA 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 the claimant does not meet the MA-P/SDA disability requirements under BEM 260/261.

SO ORDERED.



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

Date Signed: July 6, 2011

Date Mailed: July 7, 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 mailing 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/ar/tg

cc:

