

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: 2007-15123  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 21, 2007  
St. Joseph 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 in Centerville on August 21, 2007. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Mike Conrod (FIM) and Pat Green (ES).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team on September 21, 2007. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. On August 21, 2007 the Administrative Law Judge entered an Interim Order leaving the record open for the purposes of facilitating a new internist examination, as requested by the State Hearing Review Team on July 12, 2007.

ISSUE

(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 a MA-P/retro/SDA applicant (September 12, 2006) who was denied by SHRT (July 12, 2007) due to insufficient medical evidence in the record.

(2) Claimant's vocational factors are: age—47; education—11<sup>th</sup> grade; post high school education—GED; work experience—Press operator for [REDACTED], general laborer at a restaurant, and telemarketing representative in [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004 when he was a press operator.

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

- (a) Worried about his diabetes and organ damage;
- (b) Back injury;
- (c) Unable to sit for long periods;
- (d) Unable to stand for long periods;
- (e) Painful knees;
- (f) Deteriorating vision;
- (g) Intellectual deficits due to remote crowbar injury;
- (h) Low back pain;
- (i) Diabetes;
- (j) Short term memory deficits.

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

**OBJECTIVE MEDICAL EVIDENCE (July 12, 2007):**

Claimant is status post treatment, 9/2006, for an exacerbation of his conditions. No additional information has been submitted for current functional analysis.

ANALYSIS: Additional medical information is needed for current functioning capacity.

SHRT recommended a new internist evaluation.

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(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking and dishwashing.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.

- (8) The following medical records are persuasive:

The December 4, 2007 SHRT Decision (DHS-282) summarizes claimant's medical evidence.

(9) The probative medical evidence, standing alone, does not establish an acute mental condition that is expected to prevent claimant from performing customary work functions for the required period of time. There is no probative clinical evidence in the record that claimant is mentally unable to work.

(10) The probative medical evidence, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records show that claimant has diabetes mellitus, type II, and low back pain.

(11) Claimant's most prominent complaint's anxiety over his diabetic condition, short term memory loss and low back pain.

(12) Claimant has not filed a recent application for Federal disability benefits with the Social Security Administration. [REDACTED] will help him do this in the near future.

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

Claimant position is summarized in the [REDACTED] hearing request, which states the following in pertinent part:

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Claimant was hospitalized in September of 2006 for new onset of diabetes and treated for renal failure. Claimant also suffers from low back pain due to an injury, retinopathy and neuropathy in his legs and feet.

**DEPARTMENT'S POSITION**

The department thinks that the medical evidence of record does not establish any severe physical or mental impairment.

The department has requested a new internist exam to have a current profile of claimant's mental/physical status.

After reviewing claimant's new medical evidence, SHRT issued its second disability denial.

**LEGAL BASIS**

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 Family Independence Agency 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).

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 and SDA purposes. PEM 260 and 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.

Claimant's 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.



Claimant meets the Step 1 disability requirements.

## **STEP 2**

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

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

If claimant does not have an impairment or combination of impairments which profoundly limit his physical or mental ability to do basic work activities, claimant does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT decided claimant meets the severity and duration requirements.

Therefore, claimant meets the Step 2 disability requirements.

## **STEP 3**

The issue at Step 3 is whether claimant meets the listing of impairments in the SSI regulations. Claimant does not allege disability based on the listings.

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

## **STEP 4**

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previous worked as a press operator for a local manufacturing company. Claimant's work as a press operator may be defined as follows:

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The medical/vocational evidence of record establishes that claimant is able to return to his previous (light) work as a press operator. See SHRT D&O dated December 4, 2007.

Claimant does not meet the Step 4, disability requirements.

### **STEP 5**

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work.

For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy.

These terms are defined in the [REDACTED] published by the [REDACTED] [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary/light work. Claimant's vocational profile shows an individual approaching advanced age (47), with a GED education and history of semi skilled work as a press operator.

In addition to working as a press operator, claimant is able to perform work as a carry-out clerk at a grocery store, as a ticket taker for a theatre, as a parking lot attendant and as a greeter for [REDACTED].

At the hearing, claimant alleged that he is unable to work due to low back pain. Evidence of pain alone cannot be the basis for disability.

The Administrative Law Judge is not persuaded that claimant is totally unable to work based on his low back pain.

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 and 261. Claimant is not disabled for MA-P/SDA purposes based on Steps 3, 4 and 5 of the sequential analysis presented above.

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: August 3, 2009

Date Mailed: August 4, 2009

**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.

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