

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: 2007-11562  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 27, 2007  
Grand Traverse 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 in Traverse City on September 27, 2007. Claimant personally appeared and testified under oath.

The department was represented by Cindy Nelson (FIM), the Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. Claimant did not submit new medical evidence by the record close date.

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 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/SDA applicant (November 1, 2006) who was denied by SHRT (June 25, 2007) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20, as a guide.

(2) Claimant's vocational factors are: age--49; education—10th grade; post-high school education—GED, and one semester of course work at [REDACTED] (business), and courses at a casino dealer's school in [REDACTED]; work experience—produce clerk for a grocery store, self employed finish carpenter, owned and operated a restaurant.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since July 2006 when he worked as a produce clerk at a grocery store.

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

- (a) Chronic neck pain;
- (b) Chronic back pain;
- (c) Chronic right shoulder pain.

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

**OBJECTIVE MEDICAL EVIDENCE (JUNE 25, 2007):**

A 1/2007 MRI of the lumbar spine showed a mild L-5 protrusion (Page 32). According to a 1/2007 consultative exam, he was 68" and weighed 215 pounds. His grip was normal bilaterally. He did not have any neurological deficits, but his range of motion was limited in his neck and back. Range of motion was full in both shoulders. His gait was normal, but small stepped (Pages 25-28).

ANALYSIS:

Claimant has degenerative disc disease confirmed by diagnostic imaging, but does not have any significant neurological abnormalities or impaired gait.

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(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, laundry and grocery shopping.

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

(8) The following medical records are persuasive:

(a) A [REDACTED] radiology report was reviewed:

The radiologist provided the following impression:

(1) Minimal central disc protrusion at L5-S1 level, but without evidence of central spinal stenosis or lateral recess narrowing.

(2) Moderate disc space narrowing at the T11-12 and T12-L1 levels, but no evidence of disc protrusions. The other levels of the lumbar spine appear unremarkable.

(b) A January 23, 2007 medical examination report (DHS-49) was reviewed.

This document was prepared by a licensed chiropractor.

The chiropractor provided the following diagnoses:

Lumbar subluxation, cervical subluxation, thoracic subluxation, muscle spasm, cervicogenic joint inflammation and (?).

The chiropractor gave the following limitations: Claimant is able to lift less than 10 pounds occasionally; claimant is able to stand/walk less than 2 hours in an 8 hour day. Claimant is able to sit less than 6 hours in an 8 hour day.

The chiropractor did not list any limitations in claimant's hands/arms or feet/legs.

[A chiropractic opinion is not entitled to great weight pursuant to Social Security regulations.]

- (c) A [REDACTED] internal medicine examination was reviewed.

The internist provided the following background:

Patient reports a history of arthralgias involving his lower back; neck and right shoulder which he states have been present for many years. He describes that he has had several motor vehicle accidents. He describes the first one occurred in 1975 when he was a passenger in the back seat of the car that struck an oak tree. He reports at that time he had soft tissue injuries but no fractures. He reports in 1991 he was involved in another motor vehicle accident when he was ejected from the car. At that time, he was hospitalized over-night at [REDACTED] for several soft tissue injuries. He also reports that in 1997 he was driving an automobile that struck a tree. At that time he reports he had rib fractures on the right as well as a sternal fracture and was hospitalized for 3 days. He reports that he also injured his right shoulder while working as a carpenter for an aluminum siding company in the late 1990's. He continues to report arthralgias involving the right shoulder, lower back and neck. He states his low back and neck pain can be intermittently referred into any extremity. He now makes use of Naprosyn for his discomfort and Atarax to help with sleep. He is now limited in that he can only stand or walk for 30 minutes. He finds it difficult to go on long car trips. He states his symptoms do wax and wane and he has undergone physical therapy to his shoulder. He has also undergone Cordisone injection to his shoulder. He states that he is able to dress himself, take care of his daily household activities, but finds it difficult sometimes to lift objects overhead. He states that he has undergone MRI studies at [REDACTED] of the lumbar and cervical spine.\*

\*Claimant thinks that the results reported in the [REDACTED] report are unreliable because the examination was performed in 10 minutes or less.

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The internist provided the following conclusions:

(1) Multiple arthralgia.

Claimant reports a history of discomfort involving the right shoulder, lower back and neck. He reports a number of injuries. At this time, he does report tenderness on movement of the right shoulder although range of motion was full. I cannot appreciate any shoulder girdle apathy or active synovitis. There was slightly diminished grip strength of the right hand versus the left although digital dexterity was maintained. He was able to pick up a coin, button or open doors with either hand. He also reported tenderness on movement on both cervical and lumbar spine. Clinically, there was no evidence of radiculopathy. The claimant, however, is left with a slightly small-stepped gait and some modest difficulty with orthopedic maneuvers, but at this time was able to ambulate without the use of an assistive device. Station was stable. He does report that he has undergone radiographic studies to the neck and lower back and the results of these would be of interest.

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- (d) A [REDACTED] report was reviewed. The radiologist provided the following impression of the MRI of the lumbar spine:

Mild spondylosis.

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions. There is no clinical evidence of a severe mental impairment in this record. Claimant did not submit a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(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 do establish the following diagnosis: Multiple arthralgias and degenerative disc disease without significant neurological abnormalities or impaired gait.

(11) Claimant's most prominent complaint is chronic neck, back and right shoulder pain.

(12) Claimant has applied for federal disability benefits with the Social Security Administration. His application was recently denied. He filed a timely appeal.

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

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

**DEPARTMENT'S POSITION**

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

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department thinks, based on claimant's vocational profile (younger individual)(age 49) with a GED education and a history of unskilled work, that claimant is not disabled (MA-P) based on Med-Voc Rule 202.20 as a guide.

The department denied SDA disability based on claimant's failure to establish the required and duration for 90 days.

**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 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).

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 her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes. PEM 260 and 261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by a 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. Therefore, 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 result in death, it must have lasted or be expected to last for a continuous period of at least 12 month. 20 CFR 416.909.

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

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

SHRT found that 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 a Listing.

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 previously worked as a produce clerk for a grocery store.

Claimant's previous work as a produce clerk 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 states that claimant is able to lift less than 10 pounds occasionally. Claimant's lifting limitation does not preclude him from performing work as a produce clerk.

Therefore, claimant is able to return to his previous work and 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 sedentary/light work. Based on claimant's vocation profile (younger individual)(age 49) with a GED education and a history of unskilled, semi skilled and skilled work as a restaurant manager, claimant is able to perform substantial gainful activity. A careful analysis of claimant's exertional impairments shows that claimant is able to work as a bagger for a grocery store, as a ticker taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

Based on this analysis of claimant's exertional impairments, the department correctly denied claimant's application for MA-P/SDA.

Claimant has not established any non-exertional (mental) impairments.

During the hearing, claimant testified that the major impediment to his return to work was his chronic neck, back and right shoulder pain, secondary to spinal dysfunction. 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, 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 neck, back and right shoulder pain. Claimant currently performs numerous Activities of Daily Living, has an active social life and has skilled work experience as a former owner and operator of his own restaurant. The medical/vocational evidence of record, taken collectively, establishes that claimant is currently able to perform Substantial Gainful Activity (sedentary/light) work.

Claimant does not qualify for MA-P/SDA benefits under Step 5 of the sequential analysis procedure. Claimant is also disqualified for disability benefits based on Med-Voc Rule 202.22, as a guide.

#### 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 Step 5 of the sequential analysis as described 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 10, 2009

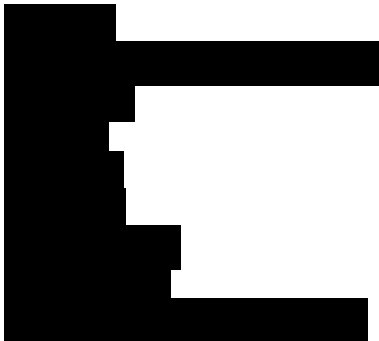
Date Mailed: August 11, 2009

**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.

JWS/sd

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