

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: 2007-15982  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 19, 2007  
Genesee 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 Flint on September 19, 2007. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Robert Harris (ES).

On August 1, 2007, SHRT issued a decision requesting additional medical.

At claimant's request, the Administrative Law Judge issued an Interem Order requesting that the department provide claimant with an internist examination.

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

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 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/retro/SDA applicant (November 9, 2006) who was denied by SHRT (August 1, 2007) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for September and October 2006.

(2) Claimant's vocational factors are: age--48; education—11<sup>th</sup> grade; post-high school education—none; work experience—currently employed as a self-employed handyman doing odd jobs, claimant previously drove a bread delivery truck and distributed newspapers.

(3) Claimant is currently performing Substantial Gainful Activity (SGA) since he is operating his own handyman business doing odd jobs. Claimant currently works 25 to 33 hours a week and has gross earnings of \$520 to \$700 per month.

(4) Claimant has the following unable-to-work complaints for the period September through November 2006. Claimant had prostate cancer surgery in September 2006:

- (a) Unable to lift after his prostate surgery;
- (b) Had a urinary catheter after surgery for several days;
- (c) Mother died in August 2006 causing depression.

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

**OBJECTIVE MEDICAL EVIDENCE (AUGUST 1, 2007):**

Medical records indicate claimant was treated for prostate cancer. A prostatectomy was recommended (Page C3).

Medical examination report of 12/2006 indicated claimant was treated for fibromyalgia/arthritis. He was noted to have tenderness around the joints. Mentally he was noted to be mildly depressed but otherwise unremarkable.

ANALYSIS: Additional information is needed about the treatment and follow-up of prostate cancer. Please obtain outstanding operative reports and treatment summaries.

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

Claimant has also engaged in hunting and fishing during the summer of 2007.

- (7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant is not computer literate.

- (8) The following medical records are persuasive:

- (a) A December 15, 2006 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses:  
Fibromyalgia.

A [REDACTED] report was reviewed: Fibromyalgia/arthritis, degenerative disc disease.

The following diagnoses were provided:

Physician states that claimant is able to lift up to 25 pounds occasionally. He can walk/stand at least two hours in an eight-hour day. He can sit less than 6 hours in an eight-hour day. No mental limitations are reported.

(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 from a PhD psychologist or psychiatrist in the record to establish a severe mental impairment. 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 establish the following diagnoses: Fibromyalgia/arthritis, degenerative disc disease.

(11) Claimant's most prominent current complaint is his chronic body pain.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. His application is currently pending.

#### CONCLUSIONS OF LAW

#### **CLAIMANT'S POSITION**

Claimant's position is summarized by █████ Associates in the Hearing Summary:

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Claimant is a 48-year-old male with an 11<sup>th</sup> grade education and a work history of odd jobs. He has the following health issues: Prostrate cancer, asthma, arthritis, degenerative joint disease, depression and major stress problems.

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#### **DEPARTMENT'S POSITION**

The department thinks that claimant has not submitted adequate medical evidence to establish a severe impairment for MA-P/SDA disability purposes.

The Administrative Law Judge issued an Interim Order requesting an independent internist exam, as requested by SHRT.

**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 currently operating his own handyman business. Claimant is currently earning between \$520 and \$700 per month doing odd jobs. Claimant currently works between 25 and 33 hours per week.

The Administrative Law Judge concludes that claimant's self employment as a handyman is substantial gainful activity. Therefore, claimant does not meet the Step 1 disability requirements and is not eligible for MA-P/SDA at this time.

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 1 of the sequential analysis procedure as discribed 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

cc:

