

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: 2007-20607
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 8, 2007
Shiawassee 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 Owosso on November 8, 2007. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Sally Wilson (ES). The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the time limit 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 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 an MA-P/SDA applicant (April 12, 2007) who was denied by SHRT (October 5, 2007) due to claimant's ability to perform a wide range of unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are as follows: Age 38; education -- 10th grade; post high-school education -- GED; work experience -- employed as a cook (semiskilled), dishwasher (unskilled), parts sorter and bell-ringer for the [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since September, 2006 when he worked as a cook.

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

- (a) Major depression;
- (b) Anxiety disorder;
- (c) Dysthymic disorder;
- (d) Bipolar disorder;
- (e) Herniated disc; and
- (f) Needs spinal fusion.

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

OBJECTIVE MEDICAL EVIDENCE (October 5, 2007)

Recently, in late 2007, claimant was in outpatient treatment at [REDACTED] for major depression and alcohol dependence. His mental status examination was normal and his memory was intact (pp. 9-11). An MRI of the lumbar spine showed L5 herniation (p. 25). In 5/2007, his family practice physician noted low back pain, degenerative disc disease as diagnoses and noted a weight of 189 pounds and blood pressure of 140/84. His gait was "abnormal" due to pain (pp. 4-5).

ANALYSIS: The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of unskilled light work.

- (6) Claimant performs the following activities of daily living (ADL's): dressing, bathing, cooking (sometimes), dishwashing (sometimes), and grocery shopping (needs help).

(7) Claimant lives alone. He has a friend who comes to help him on a regular basis. Claimant smokes one-half pack of cigarettes per day. Claimant does not have a valid driver's license and does not drive an automobile. Claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) A May 1, 2007 Medical Needs form (DHS-54A) was reviewed. The physician provided the following diagnoses: Degenerative disc disease, herniated disc (L5-S1).

The physician estimates that claimant will be unable to work at his usual occupation for six months to a year. Claimant will be unable to perform any work for six months to one year.

- (b) A May 1, 2007 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: Chronic back pain, herniated disc (L5-S1), degenerative disc disease, and hypertension.

The physician provided the following functional limitations: Claimant is unable to lift any weight. Claimant is able to stand/walk less than two hours in an eight-hour day. Claimant is able to stand/walk at least two hours in an eight-hour day.

Claimant has no use of his hands/arms. Claimant has no use of his feet/legs.

- (c) An April 30, 2007 psychiatric evaluation was reviewed. The psychiatrist provided the following background:

Claimant is a 37-year-old divorced man who has had struggles with psychiatric issues since at least the age of nine. He has been in and out of treatment. He has done a variety of things to try to kill himself. He has self-mutilated. He has significant substance-abuse issues. He was last treated with medication at [REDACTED] last fall. He says since he has been off his medicine that things seems to be going down for him and he wants to get some improvement. He is pretty hopeless, however, that anything will make a change. He was pre-screened in the emergency room on April 17th, at which time he indicated he cut on himself, drank and wanted to die. He was feeling overwhelmed by the pain he experiences and having to fill out paperwork for the disability application. He says he gets extremely overwhelmed with paperwork and knows that this sounds kind of silly, but it is one of the things that happens to him. He says any type of paperwork puts him over the edge. He has struggled with depression, suicidal thoughts and PTSD symptoms for many years, at least since the age of nine. He says that things are worse when he is by himself, especially the anxiety. He has mood irritability, suicidal ideation, initial and middle insomnia, difficulty breathing, problems with not being able to sit still, and wanting to die all the time. He also has confusion and forgetfulness. He says he is taking naps during the day. His roommate has a gun, but he says he would never use a gun to kill himself because he feels like he doesn't have the guts to pull the trigger. He says most of the time he does not feel like he has a reason to live. The last time he felt like he had a reason was back in 1995 when he was trying to go to school. He said he couldn't make it through school because things were too stressful. A couple of times since he has been living in his current apartment he has felt like he has heard a baby cry at night. He is having terrible

nightmares that have been happening since at least February. People describe him as waking up screaming "no" and then he will feel sad. He woke up once screaming profanities and was embarrassed. He did not want to ask the people who were there, but they did say something to him about it. He says people have told him that he talks in his sleep, hits out in his sleep and cries in his sleep. He says the dream sometimes has a theme of his father and own son in them. He very much misses his son, who I believe is living in [REDACTED] and who is 13 now. His appetite has increased and he has put on a lot of weight. He says 12 pounds in a week. He has poor energy. He is always tired. There is some likelihood that he has sleep apnea, as everyone who has ever slept near or around him says he snores terribly, stops breathing, and it makes them anxious. I talked with him about mania. He says he has had manic episodes, but I was unable to get a clear idea that he has actually had a manic episode. In the past, he described that his mind wanders. He has a hard time with his mind racing. Today he says that people say he talks fast sometimes. He sometimes will feel like he can do anything. Even when things are not going his way, at those times he will feel like he can do anything. He had a hard time describing much of this today and it was difficult for me to know for sure that he had a manic episode. There is no evidence of OCD or of psychoses, other than him feeling like he heard a baby crying on two occasions. He denied actually feeling suicidal or homicidal at the present time. He says perhaps there is some hope, since he has been able to get into treatment, although he is very frustrated with the other person he is working with at our agency because he does not believe that person tells the truth all the time. I talked with him about the recipient rights system, but he says he does not want to follow through on anything like that because he doesn't want to make anyone mad at him. He says he has not been drinking, other than when he went into the emergency room. He had drunk that night. He says also he has not been using substances since 2001. He is hoping to be able to get some better sleep, feel more energetic, have less anxiety, and have an improved mood.

* * *

Substance Use History and Treatment:

ALCOHOL: He has a history of alcohol abuse, but claims now he is hardly ever drinking -- perhaps once every three months. He last drank about two weeks ago during a suicidal gesture.

SUBSTANCES: He has a history of abusing crack cocaine and heroin. In my old documentation I indicated that his last use of heroin, pot or crack was January, 2002. He says today that he quit all of them after 2001. He indicated he is using pain pills appropriate.

TOBACCO: He smokes one-and-one-half packs per day.

CAFFEINE: He has cut down on his coffee to one pot daily. He does not recognize how caffeine plays a part in what is going on with him, however was agreeable enough with the suggestion to cut back that he has been working on it.

* * *

The psychiatrist provided the following diagnostic impression: Axis I -- (1) major depressive disorder, recurrent, severe without psychotic features; (2) dysthymic disorder; (3) alcohol dependence (partial sustained remission). Axis V/GAF -- 50.

- (d) An [REDACTED] was reviewed. The physician reports that claimant has markedly limited capacities in eight categories: (3) the ability to understand and remember detailed instructions; (5) the ability to carry out detailed instructions; (6) the ability to maintain attention and concentration; (11) the ability to complete a normal workday and workweek without interruptions; (14) the ability to accept instructions and respond appropriately to criticism; (17) the ability to respond appropriately to change in the work setting; (19) the ability to travel in unfamiliar places or use public transportation; and (20) the ability to set realistic goals or make plans independently of others.

The physician reports that claimant has 10 capacities where he is moderately limited.

(9) The probative medical evidence does not establish an acute mental (non-exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do show the following diagnoses: Axis I -- Major depressive disorder, recurrent, severe without psychotic features, dysthymic disorder, and alcohol dependence (partial sustained remission). Axis V/GAF -- 50.

(10) The probative medical evidence does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records do show the following exertional impairments: degenerative disc disease; herniated disc; chronic back pain; and hypertension.

(11) Claimant's most prominent complaint is his inability to go back to work.

(12) Claimant has applied for federal disability benefits with the Social Security Administration. His application was 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. Claimant's representative made the following argument on his behalf:

Claimant is eligible for MA-P/SDA because: First, claimant has eight areas where he is markedly incapacitated due to his mental impairments; second, he recently re-injured his back; third, he has not earned at least \$800 a month through employment since 2001; and fourth, the longest job claimant had was working as a cook for a restaurant. He worked five weeks in that capacity until his back was re-injured in September, 2006.

Department's Position

The department thinks that claimant has the residual functional capacity perform a wide range of unskilled light work. The department thinks that claimant's impairments do not meet the intent or severity of a Social Security listing. Based on claimant's vocational profile (younger individual at age 38, with a GED education and an unskilled work history), the department denied claimant's MA-P application based on Med-Voc Rule 202.20, as a guide. The department denied SDA benefits based on PEM 261 because the nature and severity of claimant's impairments do not preclude work activity at the above-stated level for 90 continuous 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 (formerly known as the Family Independence Agency) 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 (formerly known as the Family Independence Agency) 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 do 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 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 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. 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 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 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 the duration criteria. 20 CFR 416.920(a). If claimant does not have an impairment or combination of impairments which profoundly limits his ability to do basic work activities, claimant does not meet the Step 2 criteria.

SHRT found that claimant meets the Step 2 criteria.

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 previously worked as a cook for a restaurant. Claimant's work as a cook may be classified as light work:

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 shows that claimant is not able to lift more than 10 pounds. He is also not able to stand continuously for an eight-hour shift. Based on these restrictions, claimant is not able to do his previous work as a cook.

Claimant meets 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] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to do a wide range of sedentary/light work. Based on claimant's vocational profile, as presented above, claimant is able to perform a wide range of sedentary/light work. Based on this analysis, claimant is able to work as a carry-out clerk at a grocery store, as a ticket-taker for a theater, as a parking-lot attendant or as a greeter for [REDACTED].

In short, the department correctly denied claimant's MA-P/SDA application due to his ability to perform substantial gainful activity.

During the hearing, claimant testified that one of the major impediments to his return to work was his back pain secondary to his spinal dysfunction. Evidence of pain, alone, is insufficient to establish disability for MA-P and SDA purposes. The Administrative Law Judge concludes that claimant's testimony about his spinal pain is credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his back pain secondary to his spinal dysfunction. Even when claimant's back pain is combined with his mental impairments (major depressive disorder, dysthymic disorder and alcohol dependence), claimant's work-related impairments do not rise to the level of severity that would totally preclude all employment.

Claimant currently performs many activities of daily living, has an active social life and enjoys using the computer. Taking the medical/vocational evidence as a whole, the

Administrative Law Judge concludes that claimant is able to perform a wide range of sedentary/light work.

Therefore, claimant does not qualify for MA-P/SDA benefits under Step 5 of the sequential analysis procedure.

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.

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 14, 2009

Date Mailed: August 17, 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/jj

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cc:

