

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: 2007-29355
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 28, 2008
Lapeer 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 Lapeer on February 28, 2008. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED].

The department was represented by Pat Bentley (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on March 28, 2008. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the ALJ made the final decision below.

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/retro/SDA applicant (January 31, 2007) who was denied by SHRT (November 8, 2007) due to claimant's history of drug and alcohol abuse. Claimant requests retro MA for October, November and December 2006.

(2) Claimant's vocational factors are: age--46; education--high school diploma, post-high school education--licensed [REDACTED] auto mechanic; work experience--more than 10 years as an automobile mechanic.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he was a general auto mechanic for church and Sam's auto repair in October 2005.

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

- (a) Arthritis of hips and knees;
- (b) Left hip dysfunction with pain;
- (c) Left knee dysfunction with pain;
- (d) Left wrist dysfunction with pain;
- (e) Status-post left wrist surgery (December 2007);
- (f) Reduced range of motion in the spine;
- (g) Back pain;
- (h) Seizures;
- (i) Anxiety;
- (j) Depression; and
- (k) Sleep dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (November 8, 2007)

The medical records of evidence reported claimant with alcohol abuse. Claimant reported 5/2006 that he drinks a fifth a day and beer, and has done so for 20 years. The hospital treatment records from 5/2006 to 10/2006 reported alcoholism. Specialized testing concluded the head CT scan, carotid Doppler, chest x-ray, EKG, echocardiogram and EEG were all normal. The pancreatitis, gout, kidney problems, and seizures were all residuals from the alcoholism. The conditions improved with aggressive medical treatment and abstinence from alcohol. Claimant was told to stay away from alcohol (page 30).

At the 2/2007 physical examination, the status of the impairments was stable. The lumbar spine and left shoulder and left knee had decreased range of motion. Gait was normal. Motor strength, sensation and reflexes were present and equal bilaterally. Heel and toe and squat and recovery were done normally. Grip strength and hand dexterity were good. The abdomen was tender. There was no edema and the liver was not palpable. Claimant reported he was depressed secondary to his divorce and loss of work. The medical status exam was within normal limits. The treating physician reported 2/2007 that claimant had no mental limitations. Personal and home care needs are met (page 17).

* * *

(6) Claimant lives with his parents and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing (sometimes), light cleaning, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair, shower stool, leg brace, or wrist brace.

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

- (8) The following medical records are persuasive:

(a) A February 21 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnoses: gout.

The physician reported the following functional limitations: Claimant is able to lift up to 25 pounds occasionally. There are no standing, walking, or sitting limitations. Claimant is able to use both hands/arms normally. He is able to use both feet/legs normally.

The physician reported no mental limitations.

- (b) A February 20, 2007 internal medical exam was reviewed. The physician provided the following chief complaints: 'I have gout for the last 7 years and arthritis in my back as well as left knee and right shoulder for the last 5 years. I have had seizures for the last 1 year and have kidney problems as well as pancreatitis and tobacco and alcohol abuse.'

History: This 45-year-old male patient was evaluated as of 2/20/2007 for the above disability claims. The patient is under the care of this family physician and has been on multiple medications. The patient had been diagnosed with gout and elevated uric acid. He denies having any x-rays. The patient also claims to be drinking heavily and was in rehab. He was sober for some time and then restarted again. He gets seizures which are of indeterminate nature. The onlookers say that he just passes out and sometimes bites his tongue. He does not wet his pants. He goes into postictal sleep and wakes up dazed with headache, loss of memory and drowsiness. The patient was admitted to the hospital for seizure activity as well as for alcohol abuse and related cirrhotic liver and upper GI bleed. He was also found to have azotemia. At the present time he also is complaining of left flank pain, upper right quadrant pain, and also epigastric pain from his ongoing problem with alcohol, namely cirrhosis, pancreatitis and possible gastritis. He also gives a history of a motorcycle accident about 3 years ago wherein he tore his left knee ligaments which is hyperextensible.

The physician provided the following impression: chronic alcohol and tobacco abuse. Cirrhosis of the liver. History of upper GI bleed, possible varices. Chronic pancreatitis, secondary to alcohol abuse. Seizure activity, possibly related to alcohol abuse. Arthritis. Gout. Depression, rule out bipolar disorder. Renal insufficiency.

- (c) A [REDACTED] report was reviewed.

The Ph.D. psychologist provided the following history:

Claimant is a 45-year-old male who was driven to the appointment by his father and arrived punctually. Claimant reported that he has knee problems, seizures, gout, back problems, pancreas problems and kidney failure. He said that he might have bi-polar disorder. He said that he has never been diagnosed with it. He said that he has poor concentration. He said that when he reads, he is sometimes not taking in any information. He said that he has not been happy in a long time; he got divorced, his house burned down and his best friend died. He denies being hyperactive.

* * *

Claimant has attended two years of college classes and then completed schooling to be an airplane mechanic. He ended up being an auto mechanic. Claimant is divorced and has three children. Claimant reported the following legal problems: he said he has a pending DUI. Claimant reported having problems with the following substance: alcohol. He said he has drunk alcohol his whole life, but his drinking has escalated the last 2 years after getting divorced and being laid off from his job. Claimant most recently worked 18 months ago as an auto mechanic.

* * *

Social functioning: Claimant reported generally getting along okay with others. Claimant reported avoiding social interactions and staying home as much as possible. His parents are visiting from Florida currently. Claimant reported that while employed, interactions with former co-workers were satisfactory. Claimant was socially appropriate and pleasant during this exam. Claimant's eye contact was appropriate.

* * *

The Ph.D. psychologist provided the following diagnoses: Axis I--Depressive disorder, NOS; ADHD, NOS (mild); alcohol dependence. Axis V/GAF--61.

The Ph.D. psychologist provided the following additional information:

It was my impression that claimant's psychological condition would mildly impair his ability to perform work-related activities.

* * *

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The [REDACTED] provided a diagnosis of depressive disorder, NOS; ADHD, NOS (mild); and alcohol dependence. The Axis V/GAF was 61. The Ph.D. psychologist provided the following opinion regarding claimant's ability to perform work functions:

It was my impression that claimant's psychological condition would mildly impair his ability to perform work-related activities.

Claimant did not submit a DHS-49D or 49E to establish his residual functional mental capacity

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) condition expected to prevent claimant from performing all customary work functions.

The medical records do show that claimant has the following conditions: chronic alcohol and tobacco abuse, cirrhosis of the liver, history of upper GI bleed, possible varices, chronic pancreatitis secondary to alcohol abuse, seizure activity, possibly related to alcohol abuse; arthritis, gout, and renal insufficiency.

(11) Claimant's primary complaints are arthritis in the hip and knees and status post left wrist surgery.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. His application was denied. Claimant 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 also requests retro for October, November and December 2006.

DEPARTMENT'S POSITION

The department thinks that claimant's mental and physical impairments (pancreatitis, gout, kidney problems, and seizures) are the residual effects of claimant's alcoholism. The department notes that claimant's conditions improved with aggressive medical treatment and abstinence from alcohol. The department also notes that claimant was told to stay away from alcohol.

The department thinks that claimant is able to work, in spite of his physical limitations.

The department thinks that claimant's mental limitations are secondary to alcohol abuse.

SHRT denied claimant's MA/SDA applications based on [REDACTED], which precludes a finding of disability when substance (alcohol) abuse is material to the impairments alleged as the basis for benefits.

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 Department of Human Services 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/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 or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 eligibility test.

STEP 2

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

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means that the severe impairment is expected to last for 12 continuous months or result in death.

SHRT found that claimant was not eligible for MA-P/SDA for two reasons:

(1) [REDACTED] precludes a finding of MA-P/SDA disability when substance abuse (alcohol) is a material factor in the impairments alleged as the basis for disability.

(2) Claimant has been advised, by his doctors, to discontinue his drinking because it is having adverse affects on his health. However, claimant reports that he continues to drink, against medical advice.

Therefore, claimant does not meet the Step 2 eligibility test.

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 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as an automobile mechanic.

It is obvious from the medical records that claimant is no longer able to do the medium-heavy work that is required of an auto mechanic. He has difficulty using his left hand/wrist due to recent surgery. He also has work limitations arising out of his left hip, knee and wrist dysfunction.

The medical evidence establishes that claimant is not able to return to his work as a licensed auto mechanic.

Therefore, claimant meets the Step 4 eligibility test.

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 perform unskilled sedentary work. Claimant is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to his return to work was his spinal dysfunction and his left hip, knee and wrist dysfunction, including hip, knee and wrist pain.

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 hip, knee and wrist pain. Claimant currently performs numerous activities of daily living and is somewhat computer literate. This means that claimant is able to perform unskilled sedentary work (SGA).

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

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 purposes based on Steps 3 and 5 of the sequential analysis as described above.

Claimant also is not disabled for MA-P/SDA purposes because he continues to abuse alcohol, against medical advice, and the alcohol abuse is a material cause of claimant's exertional impairments.

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: October 12, 2009

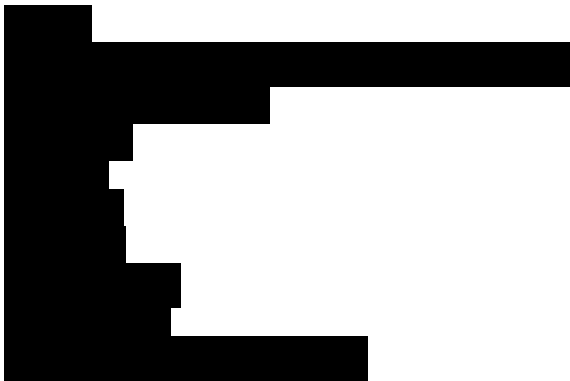
Date Mailed: October 13, 2009

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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/cv

cc:

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