

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: 2008-21060
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2008
Ingham 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 Lansing on July 29, 2008. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Gayle Vail (Lead Worker).

The hearing record was left open at claimant's request for a second SHRT review of additional medical reports presented on or before August 13, 2008 (Exhibit C1, pages 46-48 and Exhibit D1, pages 49-54). After SHRT's second non-disability determination, 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 (February 7, 2008) who was denied by SHRT (June 26, 2008) due to claimant's ability to perform light unskilled work under Med-Voc Rule 202.20. Claimant requests retro MA for November and December 2007 and January 2008. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—42; education—12th grade; post high school education—bachelor's degree in horticulture from [REDACTED]; [REDACTED]; work experience—executive director of the horticulture resources and scholarship trust.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he was executive director of the horticulture resources and scholarship trust.

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

- (a) Heart dysfunction (TIAs);
- (b) Status post cardiac arrhythmias;
- (c) Status post blood clots;
- (d) Heart disease;
- (e) Cognitive difficulties;
- (f) Sleep dysfunction;
- (g) Neurological dysfunction;
- (h) Speech difficulties.

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

OBJECTIVE MEDICAL EVIDENCE (June 26, 2008)

SHRT reviewed eligibility under Listings 12.20, 12.04, 12.05, 12.06 and 4.05. SHRT decided that claimant's medical evidence did not satisfy any of those listings. SHRT decided that claimant was able to perform light work (20 CFR 416.967(b)) and unskilled work (20 CFR 416.968(a)).

SHRT denied MA-P/SDA eligibility based on Med-Voc Rule 202.20.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping (sometimes), vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, a walker, or a wheelchair. He is able to bathe by himself. He does not wear a brace on his neck, arms or legs. Claimant was hospitalized twice in 2008 for ventricular tachycardia.

(7) Claimant has a valid driver's license, but has not driven a car since the Fall of 2007 due to his cardiac issues. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] letter was reviewed.

The neurologist provided the following information.

I am writing this letter in support of claimant's application for disability. I feel that on the basis of his excessive fatigue, sleep disorder, and cognitive dysfunction, that he is completely disabled from gainful employment at this time. This is not something that is expected to improve in the future. This, in addition to his multiple cardiac issues, I believe is an adequate basis to qualify Mr. Willbrandt for total disability.

The neurologist did not specify any particular work functions that claimant was unable to perform.

(b) A [REDACTED] letter was reviewed.

The cardiologist provided the following information as background:

I saw claimant for a follow-up of a non-sustained ventricular tachycardia that is associated with light-headedness. Treatment with flccainide was effective for a period of time, but the arrhythmia ultimately progressed and he became more symptomatic. Sotalol caused QT prolongation. He also has an underlying conduction

abnormality, including first degree AV block, so when I saw him in early June, I was reluctant to treat him with amiodaronc.

Claimant has a history of an ASD and mitral valve repair. His evaluation in June led to admission in order to start mexiletine. While he was in the hospital, he underwent an electrocardiogram, which showed good ventricular function. The chordae of the mitral valve were thickened. There was no significant regurgitation and no stenosis. In-patient monitoring showed rare premature ventricular beats and occasional non-sustained ventricular tachycardia. He had undergone a cardiac MRI in 2007, which showed no abnormalities of the left or right ventricle. He had a thrombus in the left atrial appendage. He has a history of atrial fibrillation which may predispose him to the artial thrombus. Treatment with Coumadin was started because of a thrombosis and a history of TIA's.

Following the most recent discharge from the hospital, claimant has continued to experience palpitations. He has not had syncope or near syncope. The mexiletine may be aggravating his light headedness and seems to be causing some indigestion.

- (c) An April 1, 2008 neuropsychological evaluation was reviewed.

The Ph.D. psychologist provided the following background: claimant is a 42-year-old man referred by Ingham County Department of Human Services (DHS) for a psychological evaluation. The referral packet contained a neuropsychological evaluation conducted with claimant on June 19, 2007.

This was the second neuropsychological evaluation conducted with claimant at [REDACTED]. The neuropsychological evaluation of June 19, 2007, stated that the previous neuropsychological evaluation "demonstrated some mild areas of impairment in memory and new learning capacity, as well as mental processing speed. Psychologically, he demonstrated a significant degree of depression, which was clearly aggravated by his chronic health problems." The June 2007 neuropsychological evaluation showed claimant demonstrated a sizable drop in the performance IQ section of the intellectual assessment." Additionally, the report, when discussing the results of the

██████████ memory scales –III noted “overall memory and new capacity are at the moderate range of impairment. This represents a 19-point drop from the previous testing 2 years ago. It would indicate a turn for the worse in terms of memory and new learning capacity. This patient now demonstrates marked impairment in his ability to retain accurate details whether they are verbalized or visually-based.” The records also noted a decrease in fine motor dexterity, bilaterally. He also exhibited “a sizable drop in verbal fluency with his performance at the moderate range of impairment.” Lastly, the neuropsychological evaluation stated “this would indicate significant impairment in areas of divided attention and cognitive flexibility.” The evaluation also reported continuing patterns of depression and psychological distress with reduced feelings of self worth and significant preoccupation with physical and medical complaints. The diagnosis provided included cognitive disorder and major depressive disorder.

Claimant reported that, since that neuropsychological evaluation, he has had either additional TIA’s or another stroke. ██████████ stated that he has continuing problems with memory, organization and planning, word retrieval and verbal fluency. He stated he has participated in cognitive therapy, physical therapy, and speech therapy. Claimant reported that he continues to have blood clots in his heart, and the risks are great. He stated that he also has continuing severe problems with sleep, fine motor functions, and intermediate tremors.

Claimant reported that he was born in ██████████ and raised in ██████████. He was raised by both parents. He was the second of three children in the family. He was raised on a farm and had a normal childhood. Following graduation from high school, ██████████ attended college and completed a law degree. For two years, he worked for an agricultural trade association as their attorney. He has been unable to work in the last two years because of cognitive deficits, memory deficits, physical deficits and speech deficits.

Claimant stated that he has no history of drug or alcohol abuse. He has no military history and no criminal history.

Claimant stated he has never been psychiatrically hospitalized. He stated that prior to his strokes, he never experienced significant levels of depression or anxiety.

Since his strokes, he received some out-patient counseling through [REDACTED], but “they decided it was situational depression because of my strokes and I’m not being seen there anymore.” Claimant denied significant levels of depression at this time, and described himself as “concerned and worried. Sometimes I don’t feel very useful. I am not suicidal. I’m doing better.”

The Ph.D. psychologist provided the following impressions: I—Cognitive disorder, secondary to two strokes; mood disorder, depressed, secondary to severe medical problems and cognitive deficits. V—GAF—50.

- (d) A [REDACTED] medical examination report (DHS 49) was reviewed.

The physician provided the following diagnoses: memory loss; cardiac dysthymia; mitral valve insufficiency, status post surgical repair; arterial septal deficit, status post repair; restless leg syndrome.

The physician did not report any physical limitations.

The physician reported the following mental limitations: memory and sustained concentration.

- (e) The physician stated that claimant has a medical need for assistance with taking medications, shopping/planning.

The physician stated that claimant is unable to work at his usual occupation. Duration—ongoing.

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

The Ph.D. psychologist provided the following summary of information: information obtained within the clinical interview, through behavioral observations, and through a careful analysis of the objective tests would point to a pattern of some degree of deterioration in terms of intellectual, memory and cognitive functioning. In particular there is a clear turn for the worse in terms of visual perception, non-verbal reasoning, and visual-motor speed.

Additionally, marked impairment in memory and new learning capacity is now observed. Impairments in higher-level cognitive functioning involving verbal, thought,

fluency and divided attention, as well as cognitive flexibility are observed. This degree of decline does not appear to be accounted for by the degree of depression alone. It suggests some deterioration in terms of this patient's overall neuro-cognitive status. A number of structured interventions will be recommended to facilitate his appropriate socio-social adjustment.

The neuropsychologist provided the following diagnostic impressions: I—cognitive disorder and major depressive disorder; V—GAF—45.

NOTE: The neuropsychologist did not state claimant was totally unable to work.

(9) The probative medical evidence does not establish an acute (non-exertional) condition expected to prevent claimant from performing customary work functions for the required period of time. On June 19, 200, the Ph.D. neuropsychologist stated: given the degree of memory and cognitive impairment, in addition to this patient's health problems, I do not believe that he is capable of working full-time. He is a likely candidate for Social Security disability and at most could perform perhaps some part-time volunteer work. The neuropsychologist provided an Axis V/GAF score of 45. On April 1, 2008, a Ph.D. neuropsychologist provided a GAF score of 50 (moderate impairment). The Medical Source Opinion (MSO) by one neuropsychologist states that claimant is unable to perform sedentary work. However, the Medical Source psychologist's opinion is contrary to the great weight of the medical evidence in the record.

(10) The probative medical evidence does not establish an acute physical (exertional) condition expected to prevent claimant from performing customary work functions. The medical record establishes that claimant's physical impairments are: cardiac dysthymia, mitral valve insufficiency, status post surgical repair, arterial septal deficit with status post repair and restless leg syndrome. However, these reports do not establish a severe physical impairment that would

totally prevent claimant from performing sedentary work. In fact, one neuropsychologist suggested that claimant is able to perform part-time voluntary work.

(11) Claimant recently filed an application for Social Security benefits (SSI) with the Social Security Administration. His application was recently denied. Claimant requested a hearing.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is disable for MA-P/retro/SDA purposes based on the impairments listed in paragraph #4, above. The medical evidence establishes the following diagnoses: cardiac dysthymia; mitral valve insufficiency, status post surgical repair; arterial septal deficit, status post surgical repair and restless leg syndrome. Claimants psychological diagnoses are: cognitive disorder, major depressive disorder and GAF of 50-45.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled light work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of Social Security Listings 12.02, 12.04, 12.05, 12.06 and 4.05. The department denied MA-P based on Med-Voc Rule 202.20.

The department denied SDA benefits based on claimant's ability to perform unskilled light work.

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).

In determining how a severe mental impairment affects claimant's ability to work, four areas must be considered.

- (a) **Activities of Daily Living.** Activities of daily living refers to adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephone and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C)(b).
- (b) **Social Functioning.** Social functioning refers to an individual's capacity to interact independently and appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C)(2). Social functioning includes the ability to get along with other such as family members, friends, neighbors, grocery clerks, landlords or bus drivers. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving co-workers. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C)(2).

- (c) **Concentration, Persistence or Pace.** Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Whenever possible, however, a mental status examination or psychological test data should be supplied by other available evidence. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C)(3).

- (d) **Sufficient Evidence.** The evaluation of a disability on the basis of a mental disorder requires claimant to:

- (1) Establish the presence of a medically determinable mental impairment(s);
- (2) Establish the degree of functional limitations and impairment(s) and
- (3) Project the probable duration of the impairment(s).

Medical evidence must be sufficient and detailed as to symptoms, signs and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affect your ability to function. We will consider all relevant evidence in your case record. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

- (e) **Chronic mental impairments.** Particular problems are often involved when evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged out-patient care with supportive therapy and

medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms. 20 CFR 404, Subpart P, Appendix 1, 12.00(E).

Claimant applied for MA-P/SDA based on cardiac issues: atrial fibrillation and mitral valve insufficiency. He also has cardiac dysthymia and restless leg syndrome. Claimant's mental issues are cognitive disorder, major depressive disorder and a GAF of 45-50.

Claimant has failed to establish that he has a severe impairment which meets or equals an SSI Listing 20 CFR, Part 404, Subpart P, Appendix 1.

Regarding claimant's physical impairments, it appears that he is able to perform many Activities of Daily Living and is able to perform volunteer activities for his church which include working with the flower beds. Based on the evidence of record, claimant is mentally capable of doing his Activities of Daily Living (as long as he uses a day timer). Furthermore, claimant has a basic ability to understand and communicate with others as demonstrated by his ability to represent himself adequately at the hearing. The medical/psychological evidence does clearly establish that claimant's combined impairments are severe. Likewise, the medical/psychological evidence establishes that claimant is not able to return to his previous work as a executive director of a horticultural trade association.

However, the Administrative Law Judge concludes that claimant is able to perform sedentary work as defined below:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Furthermore, claimant lives with his roommate, and has an active social life with other family members. Also, claimant is computer literate.

Based on a careful review of the medical/psychological evidence of record, the Administrative Law Judge concludes that claimant is able to perform unskilled sedentary work, at least on a part-time basis (SGA). Therefore, the department correctly denied claimant's MA-P/SDA application using PEM 260 and 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly denied claimant's MA-P/SDA applications.

Accordingly, the department's action is, hereby, **AFFIRMED**.

SO ORDERED.

/s/

Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 18, 2009

Date Mailed: November 18, 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 receipt date of the rehearing decision.

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cc:

