

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: 2008-21433  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 20, 2008  
Kalamazoo 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 Kalamazoo on August 20, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Robert Cairns (ES).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on August 22, 2008. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT.

After SHRT's second non-disability denial, the Administrative Law Judge 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 (December 27, 2007) who was denied by SHRT (June 30, 2008) due to claimant's ability to perform unskilled other work.

20 CFR 416.968(a). Claimant requests retro MA for September, October and November 2007.

(2) Claimant's vocational factors are: age--52; education--11<sup>th</sup> grade, post-high school education--GED, one semester at [REDACTED], and completion of chauffeur's license (CDL) exam; work experience--certified nurse's assistant, self-employed re-upholsterer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he was employed by [REDACTED] as a certified nurse's assistant (CNA).

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

- (a) No lower intestines;
- (b) Unable to sit for long periods;
- (c) Unable to stand for long periods;
- (d) Status post colostomy;
- (e) Urinary dysfunction;
- (f) Depression;
- (g) Anxiety.

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

**OBJECTIVE MEDICAL EVIDENCE (June 30, 2008)**

SHRT denied MA-P/SDA based on claimant's ability to perform past unskilled light work. 20 CFR 416.967(b).

\* \* \*

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, dish washing, light cleaning, vacuuming, and grocery shopping (needs help). Claimant was hospitalized at the [REDACTED] in [REDACTED] and April 2008 for a bowel resection/colostomy. Claimant does not use a cane, a walker, a wheelchair, a shower stool, a neck brace, or braces on his arms or legs. Claimant does wear a waist brace approximately twice a month. Claimant was hospitalized twice in 2007 and once in 2008.

(7) Claimant has a valid driver's license and drives approximately four times a month. A friend gave him a ride to the hearing. Claimant is not computer literate.

- (8) The following medical records are persuasive:

- (a) A [REDACTED] initial psychological assessment was reviewed.

The history provided by the certified master social worker states claimant was self-employed as a furniture re-upholsterer. The [REDACTED] background also states that claimant completed one semester at [REDACTED] for a filing clerk. Claimant served in the [REDACTED] for three years. His job description upon discharge was [REDACTED] mate. Claimant also drove [REDACTED] officers around when his unit was in port. Claimant's most recent work has been as a certified nurse's assistant.

The licensed master social worker provided the following DSM diagnoses:

AXIS I--Nicotine and alcohol abuse;  
AXIS V/GAF--60.

\* \* \*

- (b) An [REDACTED] physician note was reviewed.

The physician provided the following background:

Claimant had surgery to revise his colostomy which is in place after surgery for bowel obstruction and partial resection of his colon. He is also complaining of pain in his bladder when the urine comes in and the color of his urine was clearing but now it's red again. During the colon surgery, the surgeons made a hole in his bladder per patient's report. He has a Foley catheter in place.

The physician provided the following active problem list:

- (1) Smoker;
- (2) Erectile dysfunction;
- (3) Polysubstance dependence to alcohol and nicotine;
- (4) Colostomy status: status-post right sigmoidectomy;
- (5) History of diverticulitis;
- (6) Nicotine dependence;
- (7) Alcohol dependence.

The physician provided the following impressions:

- (1) Urine infection;
- (2) Urinary tract infection.

**NOTE:** No work limitations were reported by the physician.

There is no indication from the physician that claimant is unable to return to work.

- (9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. There are no definitive clinical assessments from a Ph.D. psychologist or an M.D. psychiatrist. There are no DHS-49Ds or a DHS-49Es in the record to establish claimant's mental residual functional capacity. A [REDACTED] provided a report dated [REDACTED]. The master social worker provided the following diagnoses: (1) Nicotine and alcohol abuse; (2) GAF--60. There is no probative information from a Ph.D. psychologist or a psychiatrist stating that claimant is unable to return to work.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The [REDACTED] physician (report dated [REDACTED]) provided a diagnosis of urinary tract infection. The medical record taken as a whole does provide the following diagnoses: Bowel obstruction, status-post bowel re-section, status-post colostomy, and urinary tract infection. The medical reports prepared by the physicians, do not state that claimant is unable to return to work.

(11) Claimant's most prominent complaint is that he is "depressed" due to the sequelae of having a colostomy.

(12) Claimant recently filed an application for federal disability benefits with the Social Security Administration. Social Security denied his application; claimant's application is pending.

(13) Claimant is currently receiving unemployment benefits from the State of Michigan. His benefit begin date is August 19, 2007. His filing date is July 23, 2008. A UCB recipient must be ready and willing to work as a condition of eligibility for UCB.

## CONCLUSIONS OF LAW

### CLAIMANT'S POSITION

The rationale for claimant's MA-P application is summarized by [REDACTED] in the hearing request:

\* \* \*

Claimant is a 51-year-old with a history of unskilled work. He was hospitalized in September 2007 for sigmoid colon obstruction, secondary to acute diverticulitis, and underwent surgical resection of the colon with end colostomy. Claimant has a history of chest pain, shortness of breath, abdominal and lower back pain. Claimant uses a cane for balance and assistance with his colostomy bag. A failed colostomy reversal was attempted at a [REDACTED] in [REDACTED].

\* \* \*

**DEPARTMENT'S POSITION**

The department denied claimant's application based on his ability to perform unskilled light and medium work. 20 CFR 416.967(b).

**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).

The department evaluates disability based on mental illness according to the following standards:

(a) **Activities of Daily Living.**

**Activities of daily living** including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) **Social Functioning.**

**Social functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 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, App. 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. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

(d) **Sufficient Evidence.**

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete 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) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) **Chronic Mental Impairments.**

**Chronic Mental Impairments:** Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient 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, App. 1, 12.00(E).

**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 260/261. "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. PRM, Glossary, page 34.

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

However, the evidence of record shows that claimant is currently receiving unemployment benefits from the State of Michigan. His unemployment filing date is July 23, 2008. His unemployment begin date is August 19, 2007.

In order to receive unemployment benefits in the State of Michigan, claimants must establish that they are ready and able to work.

Although claimant is not currently performing Substantial Gainful Activity, his connection with the unemployment system indicates that he is ready and able to work.

Therefore, claimant does not meet 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.

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.

The medical evidence does not establish that claimant has a severe impairment at this time. The medical evidence from the master social worker who evaluated claimant in February 2008 indicates a diagnosis of nicotine and alcohol abuse. The master social worker

also reported a GAF of 60. Claimant does not meet the severity and duration requirements based on a mental impairment.

Second, the medical records from the [REDACTED] physicians indicate claimant has the following diagnoses: status-post bowel obstruction, status-post bowel resection, status-post colostomy and urinary tract infection. None of these conditions taken individually or collectively constitute an impairment which meets the severity and duration requirements.

Therefore, claimant does not meet 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 that he meets any of the Listings.

Therefore, the Administrative Law Judge concludes that claimant does not meet the Step 3 disability requirement.

### **STEP 4**

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a certified nurse's assistant. In this capacity, claimant was required to lift 50 to 100 pounds routinely.

Claimant's work as a certified nurse's assistant may be classified as medium work.

Medium work may be defined as follows:

**Medium work.** Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

The medical evidence of record establishes that claimant has been successfully treated for a bowel obstruction. Although claimant's colostomy is inconvenient and significantly reduces claimant's quality of life, the colostomy in and of itself does not preclude claimant from performing at least sedentary work. It does prevent him from performing his previous work as a certified nurse's assistant.

Therefore, 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.

First, claimant thinks that he is unable to work due to depression arising out of the bowel resection surgery he had in 2007. Claimant stated that this surgery and the placement of the colostomy has significantly impaired his quality of life. While the Administrative Law Judge is able to agree that claimant's colostomy does impair his quality of life, the colostomy in and of itself does not preclude claimant from performing sedentary work activities.

Second, claimant thinks that he is unable to work based on his inability to sit and stand for long periods, his colostomy, and his urinary dysfunction. The medical evidence provided by the [REDACTED] physicians in the record does not establish that claimant is totally unable to sit or stand for reasonable periods of time. While it is true that claimant would need to use the restroom more frequently than a person who does not have this condition, the colostomy in and of itself does not preclude claimant from performing sedentary work. Furthermore, there is no evidence

that claimant's urinary dysfunction prevents him from performing sedentary work. Claimant did not provide a DHS-49 or any evidence from a physician which states that he has a limited ability to sit or stand. **Also, claimant reported to the UCB Department that he is ready and able to work.**

In short, the Administrative Law Judge does not think that claimant's current mental and physical impairments totally preclude him from performing sedentary work. Considering the medical record as a whole, in conjunction with claimant's testimony, the Administrative Law Judge concludes that claimant is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

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 260/261.

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: January 4, 2010

Date Mailed: January 4, 2010

**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

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