

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. Nos: 2008-26331 &
2008-27846

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 29, 2009

Allegan 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 on January 29, 2009, in Allegan. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED]

[REDACTED].

The department was represented by Mariah Schaefer, Assistance Payments Supervisor.

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on January 30, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued a 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 (May 1, 2008) who was denied by SHRT (August 7, 2008) based on the claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requests retro MA for February, March, and April 2008.

(2) Claimant's vocational factors are: age—41; education—11th grade, post high school education—GED; work experience—farm laborer, tire technician and forklift, dry waller and short order cook.

(3) Claimant has not performed substantial gainful activity (SGA) since [REDACTED] when he worked as a farmer laborer, tire repair technician and forklift operator for a local farmer.

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

- (a) Head laceration;
- (b) Abdominal scar tissue due to surgery;
- (c) Status post abdominal surgery/hernia repair [REDACTED]);
- (d) GERD;
- (e) Asthma;
- (f) Daily vomiting;
- (g) Feels like a zombie;
- (h) Takes medications for psychiatric impairments;
- (i) Does not like people;
- (j) Violent angry outbursts;

- (k) Likes to be alone;
- (l) Does not trust people;
- (m) Depression;
- (n) Bipolar disorder.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

X-ray of the lumbar spine on [REDACTED] demonstrated mild degenerative changes. (Page 25.)

MRI of the left shoulder of [REDACTED] demonstrated tendinosis and mild degenerative changes. (Page 24.)

Office visit of [REDACTED] indicate claimant was 69 inches tall and weighed 292 pounds. He was noted to have abdominal wall hernia. An impression of abdominal bloating and GERD was made. (Page 22.)

Psychological evaluation of [REDACTED] reported claimant likes to fish, lives independently, and has a normal appearance. He did report anxiety and ruminating over things. His mood appeared depressed. He was oriented with a good memory. He was given an Axis I diagnosis of: alcohol abuse; cannabis abuse by history; and depressive disorder, NOS (Page 20).

ANALYSIS

Based on the medical information in the file, his physical condition would limit his ability to perform heavy lifting and constant overhead reaching. He should be able to perform a wide range of unskilled light work.

His mental condition may impact on his ability to perform skilled work.

Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would pose a significant limitation.

* * *

(6) Claimant lives alone and sleeps at various locations and at his mother's home on a rotating basis. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming, laundry (sometimes) and grocery shopping (needs help). Claimant does not use a cane, walker, a wheelchair or a shower stool. He does wear a stomach brace. Claimant did not receive inpatient hospital care in 2008 or 2009. He did have a hernia repair in [REDACTED].

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

(8) The following mental/psychiatric reports are persuasive:

- (a) On [REDACTED], [REDACTED] psychiatric evaluation was reviewed. The following history was presented by the psychiatrist:

Claimant is a 41-year-old single, Caucasian male who was referred for a psychiatric evaluation due to depression, mood swings, chronic pain, poor impulse control and easy irritability. He currently lives with his mother who provides transportation.

History of illness:

Claimant presented his problems as stated above. He said he began to have more problems since [REDACTED] when he had abdominal surgery, one after the other due to complications. Initially, the doctor thought he had some kind of cancer in the lymph nodes in his abdomen, but the doctor could not find the cancer and then he had an exploratory laparotomy. He had complications due to the surgery, including infection and he took a long time to recover from it. He became frustrated and thought about filing a suit against the doctor. He consulted several lawyers, but nobody took the case for him. He is unemployed, and he has no source of income. He lost his Medicaid. He is totally dependent on his family, and became more depressed and frustrated. He has poor impulse control, and he punched the wall or trees when he got angry. He denied he was violent toward any person.

He had mood swings, with high energy even with mostly a couple of nights. He then experienced a depressed mood and anxiety. He had some compulsive behavior, such as cleaning the house several times. He has had phobia and anxiety in small, closed spaces, and also gets nervous and restless with sweating and large doors and becomes frustrated about what to select when he goes to a large store to shop.

Psychiatric History:

He was seen by a psychologist while he was in prison in the past, but he was never evaluated by a psychiatrist until today. He has no prior psychiatric treatment or hospitalization.

Substance Abuse History:

He had a long history of alcohol abuse since his early teens. He consumed a case of beer a day, almost every day for many years until [REDACTED]. He also abused cocaine and marijuana in the past.

Mental Status Examination:

He appeared slightly older than his stated age. He was cooperative during the initial part of the interview. He was oriented to three spheres. He became quite angry, frustrated and upset while he was talking about multiple surgeries that he went through. He expressed how he was angry at the surgeon, who allegedly messed up his life. He has low self-esteem. He wanted to get help. He realized that he has been self medicating with alcohol in the past without seeking psychiatric help. He denies suicidal or homicidal ideation. His operation of judgment is fair. He denies hallucinations. There is no evidence of delusional thinking. He admitted to having mood swings and high energy, but mostly he experienced depressed moods. He knows that he has poor anger control problems. He was able to do serial sevens subtractions from 100. He had some tendency of blaming others for problems that he has. **He is not psychotic, and he had some insight toward his problems.**

Biopsychosocial Formulation & Diagnosis:

This is a 41-year-old, single Caucasian male suffering from depression, multiple pains, anger problems, mood swings, and financial physical and emotional problems. He came from a dysfunctional family and he was physically abused by his biological father, and also was rejected by his mother. He got into substance abuse, such as alcohol and other substances during his scenes and got involved in multiple criminal charges and he served time in jail for many years. He has had multiple surgeries since [REDACTED] and his physical functioning was lost. He has experienced many losses in his life. He has some compulsive behavior, such as cleaning the house often, and, also social phobia and an anxiety reaction in a closed space and supermarket.

DSM Diagnosis:

Axis I Bipolar II disorder, alcohol dependence, in remission; obsessive-compulsive disorder; social phobia; impulse control disorder.

Axis V/GAF—40.

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

The physician provided the following subjective complaints: This 41-year-old man is here for an evaluation of his abdominal wall. He thinks he may have another ventral hernia. He recently had a ventral hernia repair done and has a large scar for the repair. He had a bulging area at the end of that and after a couple of days of having a lot of pain, successfully reduced the hernia.

ASSESSMENT:

Possible recurrent ventral hernia.

A [REDACTED] office visit note was reviewed. The physician provided the following history:

Claimant was seen back today for a follow-up visit. He has a history of abdominal surgeries, and has had persistent abdominal pain and bloating. After his last visit in [REDACTED], upper GI small bowel follow through was completed,

and small bowel did not reveal any mass, lesion, or obstruction, but there were some deformities at the duodenal bulb. Therefore, upper endoscopy examination was completed on [REDACTED], significant for duodenitis, mild esophagitis, and gastritis. Biopsies of his stomach were unremarkable. He continues to complain of abdominal bloating, especially with physical exertion. He also has abdominal pain prior to bowel movement. He is moving his bowels regularly without any overt GI bleeding. He takes Prevacid on a regular basis, and has noted a decrease in gas and bloating. He denies any atypical heartburn symptoms. His main complaints seem to be abdominal bloating that continues to occur.

* * *

IMPRESSION:

Abdominal pain and bloating with a history of abdominal surgeries, suspected may be due to lesions or abdominal wall hernia;

Gastroesophageal reflux disease (currently controlled).

* * *

A [REDACTED] [REDACTED] chart note was reviewed.

The physician provided the following symptoms: This patient, a 41-year-old man, is here for a follow-up on his back pain. He says he pulled his back a few days ago. He had to go to the ER; they gave him some Flexeril and Vicodin. Doing much better now. Just wants to follow up on that.

* * *

ASSESSMENT:

Backache.

(9) The probative psychiatric 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. Claimant thinks he has depression, bipolar disorder, violent anger

outbursts and a basic distrust of people. Claimant's ideas are not corroborated by the [REDACTED] psychiatric evaluation. The psychiatrist provided the following diagnoses: Axis I—Bipolar disorder; alcohol dependence, in remission; obsessive-compulsive disorder; social phobia; impulse control disorder. The consulting psychiatrist did not state that claimant is totally unable to work as a result of his mental impairments. Claimant did not provide a DHS-49D or 49E to establish his mental residual functional capacity.

(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. Claimant testified that he has adhesions, abdominal pain, GERD, asthma, and daily vomiting. The physician did not say claimant was totally unable to work.

(11) The medical records show mild degenerative changes in the lumbar spine, tendinosis and mild degenerative changes in the left shoulder, abdominal wall hernia, abdominal bloating and GERD. There is no probative evidence in the medical records to establish that claimant is totally unable to work based on claimant's exertional impairments.

(12) Claimant was formerly on RSDI for a closed period. Subsequently, the Social Security Administration terminated claimant's RSDI. Claimant has filed an appeal to contest the closure of his RSDI and that matter is currently pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform a wide range of unskilled light work.

The department thinks that claimant's medical condition may impact his ability to perform skilled work.

The department considered the medical opinion in light of CFR 416.927. The evidence in the file does not demonstrate any other impairment that would impose a significant limitation.

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 does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

To determine to what degree claimant's alleged mental impairment limits his ability to work, the following regulations must be considered.

(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, and 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).

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 consideration of all factors in each particular case.

STEP #1

The issue at Step 1 is whether claimant is performing substantial gainful activity (SGA). The claimant is working and is earning substantial income, but is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties for a reasonable period of time for pay. Claimants who are working or otherwise performing substantial gainful activity (SGA) are not disabled regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b). The vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability test.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Claimant must establish that he has an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all normal work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must have satisfied both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability 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 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked as a farm laborer, tire technician and forklift operator for a local farmer. This work was medium work.

The medical evidence of record establishes that claimant has had several abdominal surgeries and is unable to perform the heavy lifting required of a farm hand.

Since claimant is no longer able to work as a farm laborer and tire technician, he is unable to return to his previous work. Therefore, claimant meets the Step 4 disability test.

STEP #5

The issue at Step 5 is whether claimant has the residual functional capacity (RFC) to do other work.

Claimant has the burden of proof to show by a preponderance of the medical/psychiatric evidence in the record that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on depression, bipolar disorder and a history of violent angry outbursts. The psychiatric reports in the record show claimant's mental condition is not a severe impairment. The consulting psychiatrist reports the following diagnoses: Axis I—Bipolar disorder; alcohol dependence, in remission; obsessive/compulsive disorder; social phobia; impulse control disorder. The psychiatrist did not report that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a torn rotator cuff, weakness, and complications from multiple surgeries. Claimant multiple abdominal surgeries prevent him from performing heavy lifting. Although, claimant is precluded from heavy lifting, the medical evidence of record does not show the claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to his return to work was his shoulder pain and abdominal pain. Unfortunately, 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 profound and 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 combination of impairments. Claimant performs a significant number of activities of daily living, has an active social life with his mother and other friends who take him in, and demonstrates the ability to be resourceful and creative by taking care of himself "on the street." Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary

work (SGA). In this capacity, he is able to work as a ticket taker for a theater, 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 based on Step 5 of the sequential analysis, as presented above.

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: April 8, 2009

Date Mailed: April 8, 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/tg

cc:

