

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: 2008-28815
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 13, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held in [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P) or 90 days (SDA)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P) or 90 days (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is an MA-P/SDA applicant (March 18, 2008) who was denied by SHRT (August 29, 2008) based on claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) [REDACTED]

[REDACTED]

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2003 when he was a sandbag filler.

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

- (a) Status post gunshot wound to the head (1988);
- (b) Status post brain surgery;
- (c) Right knee dysfunction;
- (d) Status post knee cap surgery (right);
- (e) Status post right leg surgery (metal bars inserted);
- (f) Short-term memory problems.

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

OBJECTIVE MEDICAL EVIDENCE (August 29, 2008)

A mental status exam, 4/2008, showed claimant was dressed appropriately and made appropriate eye contact. His speech was fluent. His affect was flat and mood was dysphoric. Claimant denied delusions, etc. Claimant reported using cannabis when he gets it from friends. He reported cocaine abuse awhile ago (page 21). He reportedly had a traumatic brain injury in 1988. His diagnosis included major depressive disorder, recurrent, mild and traumatic brain injury. It was noted that claimant and his mother refused to be on any antidepressant medications--he just wanted to see the therapist (page 22).

A psychiatric evaluation, dated 6/2008, showed claimant had a gunshot wound to the head in 4/1988. He was admitted in 8/2007 due to depression and being homeless (page 10). He had marked psychomotor retardation. He was somewhat unusual. He was not particularly pleasant or unpleasant. He was very dependent. His stream of mental activity was blocked, illogical, vague, slowed and poorly organized. He showed evidence of obsessional thinking and tended to be vague and evasive. He appeared depressed, anxious and his affect was blunted (page 11). Diagnosis included chronic non-psychotic organic brain syndrome--associated with a traumatic head injury, as well as substance abuse; substance abuse of cocaine in the past by history; dysthymic disorder; passive aggressive personality; status post cerebral surgery for brain trauma (page 12).

A physical exam, dated 6/2008, showed claimant had a normal gait and did not require an assistive device for ambulation. Claimant's speech was clear and he had normal mood and affect. Range of motion (ROM) of all joints checked was checked was full. The hands had full dexterity. He had full grip strength and full fist formation, bilaterally. There was some mild digital dexterity loss in the right hand, and claimant was much slower to use the right hand. He had a surgical incision scar over the lower right knee. The joint exam was unremarkable. There was no evidence of effusion (page 8). Strength was 5/5 in all extremities and sensation was intact throughout to light touch and pinprick. There were no focal neurological deficits. Deep tendon reflexes were 2+ bilaterally (page 9).

ANALYSIS:

Claimant had a gunshot wound to his head in 1988. In 6/2008 his neurologic exam was intact, although he was noted to have slow movements of the right hand. Otherwise, he demonstrated normal dexterity. Gait was normal. Claimant also has a history of substance abuse and traumatic brain injury. In 4/2008, his mental status was unremarkable, except for flat affect. In 6/2008, he was noted to be blocked, illogical, vague and slow. However, at the physical exam in 6/2008, his mood and affect were normal. His speech was clear. Based on evidence in the file, claimant would be able to do simple, unskilled, medium work.

(6) Claimant alternates between being homeless and living with a friend. He performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a

walker, a wheelchair or a shower stool. He does not wear a brace on his back, neck, arms or legs. Claimant was hospitalized in 2008 for bronchitis.

(7) Claimant has a valid driver's license and drives an automobile approximately 5 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) The relevant medical records are summarized by SHRT in paragraph #5, above.

(9) The probative psychological 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. A recent psychiatric evaluation, dated June 2008, provided the following evaluation: C

Claimant had a dependent manner, his stream of mental activity was blocked, illogical, vague, slow and poorly organized. There was evidence of obsessional thinking and a tendency to be vague and evasive. The psychiatrist provided the following diagnoses: chronic non-psychotic organic brain syndrome--associated with traumatic head injury as well as substance abuse, substance abuse of cocaine in the past by history, dysthymic disorder, passive aggressive personality and status post cerebral surgery for brain trauma. The psychiatrist did not report that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or a DHS-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. A recent medical report (June 2008) provides the following diagnoses: mild digital dexterity loss of the right hand. The physician does not state claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. His application is still pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled medium work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

Based on claimant's vocational profile [a younger individual (age 38) with a high school education and a history of unskilled work], MA-P was denied using Med-Voc Rule 203.28.

SDA was denied under PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity for at least 90 days.

LEGAL BASE

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (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).

To determine to what degree a severe mental impairment limits claimant's 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 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).

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. 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 medical/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 lasted 12 months and totally prevents all basic work activities. 20 CFR 416.909.

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

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's previous work was working [REDACTED] essentially manual labor. Claimant's last job as a [REDACTED] work, requiring significant standing and lifting.

Claimant testified that he had a gunshot wound to the head in 1988 and right knee cap surgery subsequently. However, these procedures are fairly remote and claimant has performed work activities since the surgeries he reported.

A careful review of the medical evidence does not show any particular mental or physical limitations that would preclude claimant from returning to his previous job as [REDACTED]

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his memory problems, his status post cerebral surgery and the mild digital dexterity loss of the right hand. Claimant currently performs a long list of activities of daily living, and has an active social life with his friends and roommate. 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 Wal-Mart. As noted above, he is also able to return to his previous job as a sandbag filler.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 4 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: December 29, 2008

Date Mailed: January 5, 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.

JWS/kgw

