

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: 2008-16497  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 11, 2009  
Lenawee 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 September 11, 2008 in Adrian. Claimant personally appeared and testified under oath.

The department was represented by Michelle Ritchie (FIS).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

- (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 applicant (February 12, 2008) who was denied by SHRT (May 16, 2008) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age—46; education—12<sup>th</sup> grade; post high school education—GED; work experience—custodian and maintenance worker for [REDACTED], mail sorter for [REDACTED], carpet cleaner and upholstery cleaner.

(3) Claimant has not performed substantial gainful activity (SGA) since 1999, when he worked as a custodian/maintenance man for [REDACTED].

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

- (a) Back dysfunction with pain;
- (b) Shoulder dysfunction with pain;
- (c) Hand dysfunction with pain;
- (d) Panic attacks;
- (e) Depression.

(5) Evaluated claimant's medical evidence as follows:

**MAY 16, 2008**

A medical status report, dated (1/24/2008 showed claimant's speech was normal in rate, rhythm, and volume and was spontaneous. Claimant did have slurred speech. His affect was constricted, but appropriate to mood. Thought processes were logical. There was no evidence of hallucinations or perceptual disturbance (page 68). His diagnosis included major depression,

recurrent, severe, without psychotic symptoms; generalized anxiety disorder; and undifferentiated attention deficit disorder (ADD) (page 66).

**ANALYSIS**

Claimant has a history of depression and anxiety. His mental status was basically unremarkable, except for claimant being stressed. Claimant would be able to do at least simple unskilled work.

It is noted that claimant was denied Social Security Disability benefits by an ALJ in February 2008.

\* \* \*

Claimant lives with his spouse, and performs the following Activities of Daily Living (ADLs): Dressing, bathing, cooking, dishwashing (with pain), cleaning, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant was hospitalized in 2007 one day for stomach problems. Claimant did not use a cane, walker, wheelchair or shower stool. He does not wear a brace on his neck, arms or legs. He does occasionally wear a brace on his hands.

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

(8) The following medical/psychological evidence is persuasive:

- (a) A January 24, 2008 psychiatric/psychological examination report was reviewed.
- (b) The psychiatrist provided the following mental status examination:

Claimant is usually cooperative and has fair hygiene. His mood is both depressed and with muted affect, logical thoughts, but always preoccupied with stress and poor self-esteem.

Has guilt, with delusions, poor concentration and cognition due to persisting anxiety and a usual sense of helplessness. \*\*\*

The psychiatrist provided the following diagnoses:  
Axis I—major depression, recurrent, severe; generalized anxiety disorder; social anxiety disorder. \*\*\*

(9) The probative medical evidence **does** establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The consultative psychological report states that claimant has a diagnosis of major depressive disorder, recurrent, severe, generalized anxiety disorder and social anxiety. Claimant has an Axis V/GAF of 54.

(10) The probative medical evidence does not establish an acute exertional impairment expected to prevent claimant from performing all customary work functions for the required period of time. There are not clinical records from a D.O. or M.D. to establish that claimant's shoulder/back dysfunction, and hand dysfunction totally prevents him from doing any work.

(11) The acute nonexertional impairments mentioned above, in combination with claimant's back dysfunction, shoulder dysfunction, hand dysfunction, in combination with claimant's nonexertional impairments (major depression, recurrent, severe, generalized anxiety disorder and social anxiety disorder) preclude claimant from performing any substantial gainful activity.

(12) Claimant has applied for federal disability benefits with the Social Security Administration. Social Security denied claimant's application initially; claimant has filed a timely appeal.

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

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

**DEPARTMENT'S POSITION**

The department thinks that claimant has a Residual Functional Capacity (RFC) to perform unskilled medium work. The department denied MA-P eligibility based on claimant's vocational profile [younger individual] (page 46), a GED education and a history of work as a maintenance man and custodian. The department used Med-Voc Rule 203.28 as a guide.

**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).

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 decides eligibility based on mental impairments using 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 purposes. PEM 260. "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). If claimant is working and earning substantial income, he is not eligible for MA-P.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working and 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.

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a). The psychological evaluation presented by the consulting psychiatrist shows that claimant is markedly limited in his ability to do the following:

- (5) Ability to carry out detailed instructions;
- (6) Ability to maintain attention and concentration for extended periods;
- (9) Ability to work in coordination with proximity to others without being distracted by them;

- (11) The ability to complete a normal workday and work week without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number at length of rest periods.
- (12) The ability to interact appropriately with the general public;
- (14) The ability to accept instructions and respond appropriately, criticism from supervisor;
- (15) The ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes.

The consulting psychologist provided the following remarks:

The claimant continues to struggle with his symptoms of severe anxiety and is unable to tolerate being around people. He isolates himself leading to worsening self being in depression. He has consistently struggled with his attempt to find/keep gainful employment, but is unable to maintain due to the severity of his symptoms. In addition, the presence of slurred speech (and absence of opioids/benzo characins/illicit drug use (makes it hard for him to find employment.

### **STEP #3**

The issue at Step 3 is whether the 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 requirements.

### **STEP #4**

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a maintenance man and custodian. This work requires that claimant interact with his superiors and with customers at the mobile home park in order to address the complaints which have been referred to claimant for repair. Since claimant's depression, generalized anxiety disorder and social anxiety are chronic and have lasted longer than a year, he is unable to return to his previous work as a janitor/maintenance man due to the difficulty he has

getting along with supervisors and customers. 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. **Claimant has the burden of proof** to show by the medical evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability primarily based on his nonexertional impairments.

The claimant has the following diagnoses:

- (1) Depression, recurrent, severe;
- (2) Generalized anxiety disorder;
- (3) Social anxiety disorder;
- (4) Slurred speech, gastroesophageal reflux disease; gastritis and elevated cholesterol.

A careful review of the nonexertional evidence shows that claimant is totally unable to return to work and has been medically unable to work for at least 12 months.

The Administrative Law Judge concludes that claimant has met his burden of proof by showing totally disabling nonexertional impairments.

Second, claimant thinks he is disabled based on his nonexertional impairments (gastroesophageal reflux disease, gastritis, elevated cholesterol and slurred speech. While claimant's exertional impairments are not severe enough to totally preclude employment, standing alone, they are, in combination with claimant's nonexertional impairments, a severe impairment that totally prevents claimant from doing any work.

Given claimant's severe nonexertional impairments, in combination with his exertional impairments, claimant has met his burden of proof to show a totally disabling combination of impairments. Based on the evidence of record, claimant is unable to return to any kind of work based on a combination of his nonexertional and exertional impairments.

Therefore, claimant does qualify for MA-P disability benefits under Steps 4 and 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 meets the MA-P disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby, REVERSED.

The department is required to conduct a review of claimant's MA-P eligibility on or before October 30, 2009.

SO ORDERED.

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

Date Signed: January 8, 2010

Date Mailed: January 8, 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.

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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

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