

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: 2008-19455
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 25, 2008
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 three-way telephone hearing was held in Allegan and Grand Rapids on September 25, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED]

The department was represented by Michelle Martin (Program Manager).

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 September 26, 2008. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial (October 3, 2008), the Administrative Law Judge issued the 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/ SDA applicant (March 5, 2008) who was denied by SHRT (June 12, 2008) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age—51; education—high school diploma; post-high school education—holds a certificate from the State of Michigan in [REDACTED]; work experience—self-employed auto body repairman (20 years), telephone sales representative, assembly line worker, meat packing worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he was a self-employed auto body repairman.

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

- (a) Breathing dysfunction;
- (b) Sleeping dysfunction;
- (c) All over body pain;
- (d) Hypertension;
- (e) Diabetes;
- (f) Overweight (currently weighs 330 pounds);
- (g) Depression;
- (h) Anxiety.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 12, 2008):

A DHS-54A form in the file, dated 2/2008, indicated claimant had hypertension, chronic obstructive pulmonary disease (COPD), depression, alcoholism and radiculopathy. The doctor stated that claimant did not medically need assistance with personal care activities such as bathing, grooming, mobility, meal preparation, shopping, laundry, and housework. However, the doctor stated claimant was unable to work for an indeterminate amount of time (p. 11).

Progress notes, dated 11/2007, showed claimant had alcohol withdrawal and depression (p. 17). His lungs were normal and his cardiovascular system was normal. His general appearance was normal, but he was sleepy (p. 18). On 10/8/2007, it was noted that claimant's wife died 7/6/2007. The last day he had alcohol was 9/2007 (p. 19). His exam was basically normal. There were no focal neurological deficits (p. 20).

A "sworn statement" from claimant's doctor indicated claimant's diagnosis included COPD, depression, anxiety, obesity, diabetes, hypertension, and sleep apnea. The combination of impairments impacted claimant's ability to work in a competitive full-time job.

ANALYSIS:

The sworn statement in the file from claimant's doctor did not include any objective findings to support the conclusion. His exams were basically within normal limits in 10/2007 and 11/2007. He was noted to have alcohol withdrawal. However, he was able to care for his own personal needs.

(6) Claimant lives with his son, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, laundry and grocery shopping.

Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does wear a leg brace sometimes. He has not been hospitalized recently.

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

- (8) The following medical records are persuasive:
- (a) A December 10, 2007 sworn statement, by claimant's treating physician, was reviewed.

The physician provided the following diagnoses: COPD, depression and anxiety, obesity, diabetes, hypertension and sleep apnea.

The physician provided the following information on claimant's functional abilities:

- (a) The patient suffers from lack of restorative sleep. This fact, as well as the symptoms associated with these conditions produce severe limitations as to pace and concentration. These symptoms affect the patient's ability to focus on a task.
- (b) These symptoms affect the patient's ability to maintain minimal exertion over the course of a work day on an 8-hour per day, 40-hour per week basis. **The patient would be best suited for part-time employment** and would, more likely than not, be unable to maintain an 8 hour per day, 40-hour per week job.
- (c) Because of the symptoms of these conditions, I anticipate that the patient's work day would require frequent breaks from work, as symptoms dictate. Because of patient's depression and generalized poor health, he would have problems with maintaining attendance and punctuality within a customary degree of tolerance.

- (d) The symptoms described are consistent with medically-determinable impairments as outlined in my medical records. The patient's level of pain would require him/her to frequently change positions and would require a sit-stand option. The patient could not maintain any one position for any length of time.

- (9) The probative medical evidence does not establish an acute mental (non-exertional) mental condition expected to prevent claimant from performing all customary work

functions for the required period of time. Claimant did not testify that he had a mental impairment that totally prevented him from performing substantial gainful activity. There are no psychiatric/psychological reports in the record. Also, claimant did not provide a DHS-49 or a DHS-49E to show his mental residual functional capacity.

(10) The probative medical evidence does not clearly establish an acute physical (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not provide any pulmonary function tests to establish the residual functional capacity of his lungs. The physician recorded claimant's blood pressure on February 12, 2008 at 150/100. Claimant's blood pressure is being medically managed. The physician did not provide any clear information about claimant's ability to lift, which is a critical omission when evaluating residual functional capacity. While it is true that claimant's treating physician reports that he is totally unable to work, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record and is contradicted by claimant's testimony, as well.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is eligible for MA-P/SDA for the following reasons:

First, claimant thinks he is eligible under Med-Voc Grid 201.12, which states that a person who is 51 years old, whose maximum functional capacity is sedentary work, is to be considered disabled.

Second, claimant thinks he is disabled because of the sworn statement and office notes prepared by Dr. Brady, his treating physician. Claimant thinks that the medical source opinion from his doctor must be given controlling weight.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform normal work activities.

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

The department thinks that claimant's drug and alcohol abuse preclude approval under Public Law 104-121.

The department denied MA-P eligibility because claimant did not establish an impairment which meets the department's severity and duration requirements.

The department denied SDA benefits using PEM 261, due to lack of severity. Med-Voc Grid 201.12 is advisory only; it is not controlling.

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 how a severe mental impairment affects 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, histories 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).

(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. Claimant's 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.

However, claimant did attempt to go back to work some time in 2008. He worked approximately 3 days, but was unable to keep up with the pace at the body shop.

Since claimant is not currently performing SGA, he 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.

Applying the Step 2 *de minimus* standard, claimant meets the severity requirement at this time.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. SHRT considered Listings 12.08, 4.02, 1.02, 8.05 and 3.02. Claimant does not meet any of the applicable SSI 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 previously worked as a self-employed body shop repairman. In this capacity, claimant operated the body shop and claimant also repaired cars himself.

While claimant is unable to return to his previous work as an automobile body repairman.

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 the medical evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a combination of mental impairments (depression and anxiety). There is no clinical evidence in this record from a psychiatrist or a psychologist to establish the claimant's mental impairment. Likewise, claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments (COPD, obesity, diabetes, hypertension and sleep apnea). The medical record does not contain any clinical information to establish the parameters of these impairments. What claimant submitted is the uncorroborated opinion of his treating physician. However, the treating physician has not provided any clinical evidence to support his opinion. Therefore, claimant has not established that his combination of physical impairments totally preclude all substantial gainful activity.

During the hearing, claimant testified that a major impediment to his return to work is his all-over body 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 the combination of his physical impairments and his all-over body pain. Claimant currently performs many Activities of Daily Living and has an active social life with his son. Claimant drives an automobile approximately twice a month.

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 ticker 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 based on Step 5 of the sequential analysis, as presented above.

Finally, SHRT thinks that claimant is disqualified for MA-P/SDA because of claimant's recent history of alcohol abuse. The ALJ concurs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the 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 22, 2010

Date Mailed: January 25, 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 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.

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