

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: 2008-23205  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 14, 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 Inkster on August 14 2008. Claimant personally appeared and testified under oath.

The department was represented by Benita Warren (Medical PEM).

The Administrative Law Judge appeared by telephone from Lansing.

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 13, 2008) who was denied by SHRT (July 2, 2008) due to claimant's ability to perform light unskilled work.

(2) Claimant's vocational factors are: age--40; education--11<sup>th</sup> grade; post-high school education--none; work experience--union caulker/brick layer, tree stump removal technician.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since June 2005 when he worked as a union caulker/brick layer.

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

- (a) Neck pain;
- (b) Bilateral hand dysfunction;
- (c) Simple tasks are difficult;
- (d) Status post two neck surgeries;
- (e) Bilateral numbness in the hands and arms.

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

**OBJECTIVE MEDICAL EVIDENCE** [REDACTED]

SHRT denied claimant's MA-P/ SDA application because he is able to perform light work under 20 CFR 416.967(b).

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(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming (sometimes), laundry, and grocery shopping (sometimes). Claimant was not hospitalized as an inpatient in 2007 or 2008. Claimant does not use a cane, a walker, a wheelchair, or a shower stool. He does wear a brace on his neck approximately 14 times a month. He does not wear braces on his arms or legs.

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

(8) The following medical/psychological records are persuasive:

(a) A [REDACTED] medical/orthopedic medical/progress report was reviewed.

The orthopedic surgeon provided the following history:

Claimant returns today. He is not better. He is getting worse. The percoceg that is already at 10/325 strength is not helping him. He will have to increase his medications at this point as he has really failed nonoperative treatment. He has had a C5 through C7 fusion already. It has gone well. The MRI shows no apparent disc herniation. The C3-4 has been a problem since the very first MRI from [REDACTED]. The most recent MRI from [REDACTED], shows that the C3-4 disc does indent to the spinal cord and per the radiologist's similar previous examination. I think it is time that we do fix this.

\* \* \*

**IMPRESSION:**

Cervical radiculopathy.

(b) An [REDACTED] exam by a consulting internist was reviewed.

The internist provides the following background:

Claimant stated that several years ago, he injured his neck at work. He underwent cervical fusion of the level of C4 and 5 about [REDACTED] ago, and [REDACTED] years ago, he had some type of surgery at the level of C5 and C6, both were performed at [REDACTED]. He used to have pain in the neck radiated to the right arm, accompanied by numbness and some weakness. After the initial surgery, it seemed to improve, and then he had similar problems on the left arm, again after surgery. The symptoms improved, but now he has similar problems again on the right arm. He has been told that he has another pinched nerve, this time at the level of C3-C4. This has been confirmed by EMG and MRI studies. He complains of heaviness and pain in the neck, and has 'a feeling like an accordion' and at times has headaches. He currently is taking Percocet q.u.i.d. with some symptomatic relief.

\* \* \*

On the extremities, there are no varicoidies, edema, calf tenderness or clubbing of the fingers. Calluses on both feet are normal. He is able to perform fine and gross manipulation. Grip strength is 30 kgs on the right and 26 kgs on the left. He is right handed. There are no lymphadenopathies.

Cranial nerves, speech, gait and coordination are normal. Romberg is negative. There is mild to moderate decrease in pinprick and sensation in both upper limbs, particularly on the right. Tendon reflexes are 2+ bilaterally. Muscle tone is normal. There are no tremors or muscle atrophy. Thought content and association are normal.

**DIAGNOSES:**

- (1) Multilevel cervical disc disease, with bilateral radiculopathy.

\* \* \*

- (2) A [REDACTED] Medical Examination Report (DHS-49) was reviewed. The orthopedic surgeon provided the following current diagnoses: cervical radiculopathy and discogenic syndrome.

The orthopedic surgeon under physical limitations, the orthopedic surgeon states: N/A, patient not disabled. Doctors don't fill out physical capacity form.

(9) Claimant does not allege a severe mental impairment as the basis for his MA-P/SDA application.

(10) Probative medical evidence does not establish an acute (exertional/physical) impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. The [REDACTED] Medical Examination Report completed by an orthopedic surgeon states that claimant is not disabled. The orthopedic surgeon further stated that doctors do not fill out physical capacity form. The

confidential progress report [REDACTED] states that claimant has cervical radiculopathy and needs additional surgery. The medical evidence in this record is contradictory and the medical experts are at odds over claimant's residual functional capacity. At this time, there is no uncontroverted, reliable medical evidence in this record to establish a severe disabling condition, based on claimant's cervical dysfunction and status post neck surgery.

(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 entitled to MA-P/SDA benefits based on the impairments listed in Paragraph #4, above.

##### **DEPARTMENT'S POSITION**

The department thinks that claimant is able to perform light unskilled work. The department evaluated claimant's impairments using SSI Listing 1.04. The department decided that claimant does not meet the applicable Listing.

Based on claimant's vocational profile [younger individual (age 40) with an 11<sup>th</sup> grade education and a history of semi-skilled work as a union caulker/brick layer]. The department denied disability benefits based on Med-Voc Rule 202.17.

## 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).

**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). 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 evidence of record shows the 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.

Using a reliable, uncontroverted, medical evidence, claimant must establish an impairment which is expected to result in death, or has existed for 12 months and totally prevents all current 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 Listing.

However, SHRT evaluated claimant's eligibility based on SSI Listing 1.04. Claimant does not meet the applicable SSI Listings, at this time.

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 union caulker/brick layer. This was heavy work.

The medical evidence of record establishes that claimant has cervical radiculopathy with discogenic pain. Claimant reports numbness in his hands. However, in addition, claimant has symptoms which prevent him from returning to his job as a bricklayer working on scaffolding. However, claimant reports numbness in his hands and legs. This would prevent claimant from returning to his work as a brick layer which requires him to climb scaffolding and lay bricks two or three stories above ground.

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 does not allege disability based on severe mental impairment.

Second, claimant alleges disability based on a diagnosis of cervical radiculopathy with discogenic pain. Claimant also reports numbness in his hands and feet. Claimant's medical record precludes claimant from heavy lifting and working at dangerous heights above the earth. Obviously, this precludes him from returning to his work as a brick layer. However, it does not preclude sedentary employment.

Finally, claimant testified that a major impediment to work was his back/neck pain secondary to his cervical radiculopathy and status post neck surgeries. 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 neck dysfunction, radiating pain and chronic numbness in his hands and feet. Claimant currently performs many activities of daily living, has an active social life with his mother and drives an automobile on a daily basis.

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 physically able to work as a ticket taker for a theatre, as a parking lot attendant, as a greeter for [REDACTED] and as a carryout for a grocery store.

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: February 27, 2009

Date Mailed: March 2, 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:

[REDACTED]