

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: 2008-26478  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 6, 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 Detroit on November 6, 2008. Claimant personally appeared and testified under oath.

The department was represented by Monica Hughes (Medical Contact Worker).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

(1) Did the department provide probative psychiatric evidence to show marked improvement in claimant's mental impairment, to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

(2) Did the department provide probative medical evidence to show marked improvement in claimant's physical impairment to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

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 recipient who had an eligibility review in January 2008. Claimant's MA-P benefits were terminated (in error), however, claimant is currently receiving SDA benefits.
- (2) On June 30, 2008, MRT denied MA-P and SDA due to claimant's ability to perform Substantial Gainful Activity.
- (3) On July 7, 2008, the local office notified claimant that MRT had denied ongoing benefits.
- (4) On July 11, claimant filed a timely hearing request. The local office closed claimant's MA-P, in error. The local office deleted the negative action on claimant's SDA; claimant is currently receiving SDA.
- (5) On August 7, 2008, SHRT denied claimant's review application for MA-P/SDA for the following reasons:

Claimant did not establish a severe impairment under Listings 1.02 and 12.01. Claimant is able to perform normal work activities.
- (6) Claimant's vocational factors are [REDACTED]  
[REDACTED]
- (7) Claimant has not performed Substantial Gainful Activity (SGA) since 2005, when he worked as a janitor in a factory.
- (8) Claimant has the following unable-to-work complaints:
  - (a) Emotional problems;
  - (b) Short-term memory dysfunction;

- (c) Depression;
- (d) Mood swings;
- (e) Fits of anger;
- (f) Crying spells;
- (g) Sadness;
- (h) Suicide attempts;
- (i) History of leukemia;
- (j) History of testicular cancer;
- (k) Status post right knee surgery (2005);
- (l) Arthritis;
- (m) Back pain;
- (n) Status post right knee injury;
- (o) Status post left knee injury;
- (p) Uses a cane.

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

**OBJECTIVE MEDICAL EVIDENCE (August 7, 2008)**

SHRT reviewed claimant's MA-P/SDA eligibility using SSI Listings 1.02 and 12.04.

SHRT decided that claimant's impairments were non-severe and that claimant does not qualify for MA-P/SDA based on 20 CFR 416.920(c).

(10) Claimant lives with his girlfriend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, and light cleaning. Claimant uses a cane. He does not use a walker, a wheelchair, or a shower stool. He does not wear a brace on his neck, arms, or legs.

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

- (12) The following medical records are persuasive:

- (a) A May 6, [REDACTED] report was reviewed.

The internist provided the following history:

[REDACTED] has a history of mental illness. Claimant states he has been seen at [REDACTED]. He

is currently being seen [REDACTED] a month. Claimant states he has been depressed since he was a child of 8- to 9-years of age. He was previously admitted [REDACTED] and managed there for his mental illness.

Claimant has been on Zoloft and Klonopin. He is currently taking Desyrel in addition to those medications. Claimant states he does have mood swings, anger, crying spells, sadness, suicidal thoughts, suicide attempts and he states homicidal thoughts.

Claimant has a history of arthritis of his knees, both knees since 2006. He states he does have a slow gait; x-rays have been done in the past. Claimant states he fractured his kneecap when he fell down the steps and he states he was carrying a refrigerator and on another occasion injured his left knee, so he injured both his right and left knees in the past.

Claimant has a history of chronic back pain. He states that he does have pain aggravated by standing for prolonged periods of time, stooping and squatting, getting up, walking, sitting, lifting, bending, pushing, pulling, reaching and climbing stairs. Claimant does have a cane, which is apparently self-prescribed. He has been using it since 2006. He uses it for balance and pain reduction and support.

Claimant states he has a history of leukemia and states that he did have chemotherapy done in the past. Claimant states apparently he is in remission. He believes he had leukemia with therapy as a teenager. He states his testicle was also removed.

\* \* \*

The internist provided the following impression:

- (1) Mental illness/by history;
- (2) Arthritis of both knees;
- (3) Chronic back pain/by history with some reduction in range of motion;
- (4) Leukemia/by history.

- (b) A December 20, 2006 psychiatric evaluation was reviewed.

The psychiatrist provided the following history:

Claimant is a poor historian. He reported that he has had a history of depression for many years. He stated he started

getting some help from a free clinic [REDACTED] and was referred here for follow up. He reports that his depression, anxiety, and paranoid feelings have decreased in the last 5 years, though he has a history of depression since he was a teenager. He was hospitalized [REDACTED] his teenager years for some behavioral problems. Claimant reports now thinking back that his behavior was due to his dealing with his depression. He denied any history of suicidal gestures, but reports that some suicidal thoughts have crossed his mind in the past. He has no thoughts or plans at the present time. He gives a history of frustration and feelings of agitation at times. He claims he felt like getting into arguments often, but had no physical tendencies. He gives a history of feeling paranoid lately. He is not able to give a proper history of paranoid feelings, but feels that he does not get along with people in general. His appetite is fair, but claims he lost about 5 pounds in the last 6 months. His sleep is somewhat poor.

Claimant reported he started drinking alcohol at the age of 16 and increased by the age of 18. He was drinking off and on, but he stopped on his own about 2 years ago. He started smoking marijuana at the age of 18. He stills smokes off and on. The last time he smoked was just yesterday, smoking 2 or 3 joints. He stated, 'that relaxes me in my mind.' He never had any detox treatment or was involved in any in-patient service or substance abuse treatment.

\* \* \*

The psychiatrist provided the following DSM diagnoses:

Axis I--Major depressive disorder with psychotic features; cannabis abuse.

\* \* \*

Axis V/GAF--45.

- (c) A February 15, 2008 Mental Residual Functional Capacity Assessment (DHS-49E) was reviewed. The psychiatrist reports the following markedly limited skill sets:
- (2) The ability to understand and remember 1- or 2-step instructions;
  - (3) The ability to understand and remember detailed instructions;

- (5) The ability to carry out detailed instructions;
- (6) The ability to maintain attention and concentration for extended periods;
- (7) The ability to perform activities within a schedule, maintain regular attendance and be punctual;
- (8) The ability to sustain an ordinary routine without supervision;
- (9) The ability to work in coordination with or proximity to others;
- (11) The ability to complete a normal work day and work week without interruptions of psychologically-based symptoms, and to perform at a consistent pace without an unreasonable number and length of rest periods;
- (19) The ability to travel in unfamiliar places or use public transportation;
- (20) The ability to set realistic goals or make plans independently of others.

(13) The probative psychological evidence establishes an acute (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The February 15, 2008 Mental Residual Functional Capacity Assessment reports significant mental limitations in 10 discrete functional skill sets. Based on this report, claimant is not mentally able to perform substantial gainful activity.

(14) 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. The May 6, 2008 consultative internal medicine report provided the following diagnoses:

- (1) Mental illness/by history;
- (2) Arthritis of both knees;
- (3) Chronic back pain/by history with some reduction in range of motion;

- (4) Leukemia/by history.

The internist who prepared the May 6, 2008 medical report did not state that claimant was totally unable to work. The medical records, do establish that claimant is unable to perform jobs which require heavy lifting or repeated squatting.

(15) 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 a continuation of his MA-P/SDA benefits based on the impairments listed in paragraph #4, above.

In particular, claimant thinks that he has severe mental impairments which preclude substantial gainful activity. Furthermore, claimant thinks that he has severe physical impairments that totally preclude substantial gainful activity.

### DEPARTMENT'S POSITION

The department evaluated claimant's disability claim using SSI Listings 1.02 and 12.04. The department decided that claimant does not meet either listing and that claimant has not established a severe impairment which totally precludes all work activity.

The department did not review claimant's MA-P/SDA eligibility using the applicable improvement rules.

### 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).

**The department has the burden of proof** to show by a preponderance of the medical evidence that claimant's physical and mental impairments have improved to the extent that claimant is now able to perform Substantial Gainful Activity. 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, 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 the department has established improvement in claimant's mental and physical impairments to the degree that he is now able to perform Substantial Gainful Activity.

The department has the burden of proof to show that claimant's mental and physical impairments have substantially improved to the point where claimant can perform basic work activities.

**PHYSICAL IMPAIRMENTS:** The medical evidence of record (consultative internal medicine report, May 6, 2008) does establish that claimant's physical impairments do not totally preclude substantial gainful employment. Claimant's arthritis is primarily in his knees and does limit his ability to do frequent lifting and squatting. Claimant's back pain is significant, but cannot be the basis for a disability determination. Claimant's leukemia is in remission and is not severe at this time.

**MENTAL IMPAIRMENTS:** The department has not established marked improvement in claimant's mental impairments. The December 20, 2006 psychiatric evaluation shows that claimant's mental impairments still significantly impair his ability to perform substantial gainful activity. Most importantly, however, the February 15, 2008 Mental Residual Functional Capacity Assessment shows 10 areas of marked skill set limitation. Given claimant's numerous mental limitations, he is unable to perform Substantial Gainful Activity. **The department has not shown that claimant's mental impairments have improved to the point where claimant is now able to perform substantial gainful activity.**

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established marked improvement in both claimant's

mental and physical impairments to the extent that he is now able to perform Substantial Gainful Activity under PEM 260/261.

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

SO ORDERED.

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

Date Signed: January 5, 2009

Date Mailed: January 6, 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 mailing date of the rehearing decision.

JWS/cv

[REDACTED]