

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: 2009-11528
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 21, 2009
Tuscola 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 April 21, 2009 in Caro. Claimant personally appeared and testified under oath. The claimant was represented by [REDACTED] from [REDACTED].

The department was represented by Karen Southgate (General Services 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 April 21, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, 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 (November 17, 2008) who was denied by SHRT (February 6, 2009) due to claimant's ability to perform unskilled sedentary work.

(2) Claimant's vocational factors are: age—31; education—11th grade; post high school education—GED; work experience—pickle loader for a pickle factory, heating and cooling installer (both electrical and plumbing), kitchen home remodeler (plumbing, electrical and rough/finish carpentry).

(3) Claimant has not performed substantial gainful activity since 2006 when he worked as a pickle loader at a pickle factory.

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

- (a) Left hip/knee degenerative bone disease;
- (b) Bulging disc in lower back;
- (c) Mental issues;
- (d) Chronic pain when sitting;
- (e) Chronic pain when walking.

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

OBJECTIVE MEDICAL EVIDENCE (February 6, 2009)

SHRT decided that claimant was able to perform unskilled sedentary work. SHRT evaluated claimant's impairments under 20 CFR 404, Subpart P, Appendix. SHRT decided the claimant does not meet any of the applicable listings. SHRT denied disability based on claimant's ability to work under 20 CFR 416.967(a).

(6) Claimant lives with his father. Claimant performs the following Activities of Daily Living: dressing, bathing, cooking (sometimes), dishwashing (sometimes), vacuuming, laundry (needs help) and grocery shopping (sometimes). Claimant uses a cane approximately 30 times a month, and shower stool approximately 30 times a month. Claimant does not use a walker or wheelchair. Claimant does not wear braces. Claimant was not hospitalized in 2008 or 2009 for inpatient services.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate. Claimant visits his 9-year-old daughter four times a month.

(8) The following medical records are persuasive:

(a) A January 15, 2009 initial psychiatric evaluation was reviewed.

The psychiatrist provided the following background.

* * *

The claimant reports he was having severe verbal aggression and anger issues for a long time, but about two years ago, he became concerned that he needs help with his anger and losing his temper. Before that when he was living with his daughter's mother, he had frequent aggressive anger episodes. He was repeatedly told by his daughter's mother that he needs to seek some treatment. Because of some insurance issues, he was not able to seek treatment for his problems. Claimant further reports he also has problems with sleep.

* * *

Claimant further reports that he feels very nervous in public places and crowds. His heart starts racing, palms become sweaty and his mouth becomes dry and he is unable to speak. He thinks that people are watching him and following him. He acknowledges that he frequently hears voices which are whispering in nature. They are never commanding and directing him. These voices are more pronounced when he lies in the bed and at times his mind races and he never gets different thoughts out of his mind.

* * *

MENTAL STATUS EXAMINATION:

Claimant is a 31-year-old Caucasian male who appears his stated age. He was wearing casual dress with a baseball cap on his head and was sitting in the chair in a rather apprehensive manner. He did not show any abnormal motor activity. He was engaged and had good eye contact. His speech was clear and coherent and did not show any evidence of past or pressured speech. Mood was described as depressed and ‘pissed off’ and affect was anxious. Thought process and contents do not show any evidence of psychotic symptoms or suicidal or homicidal ideations. However, he acknowledged hearing whispering voices when he lies in bed at night. He also acknowledged fleeting thoughts of self harm, but no active plans or intents. Attention and concentration was impaired, and insight and judgment was poor. Fund of knowledge was commensurate to level of education.

DSM DIAGNOSIS:

Axis I—Major depressive disorder, recurrent severe, with psychotic features; anxiety disorder, NOS; bipolar disorder, NOS; polysubstance dependence.

Axis V/GAF—45.

- (b) A November 19, 2008 Medical Needs form (DHS-54A) was reviewed.

The physician provides the following diagnosis: severe degenerative joint disease (DJD) of hip and knee, left side.

The physician states that claimant has a medical need for assistance with laundry and housework.

The physician states that claimant is unable to work at his usual occupation (indefinitely). The physician states that claimant is unable to work at any job (indefinitely).

- (c) A November 19, 2008 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: degenerative joint disease of left hip and knee; severe pain; gait abnormality; illegible.

The physician reported the following limitations: Claimant is able to lift 10 pounds frequently and 20 pounds occasionally. No limitations of standing/walking or sitting were noted. The physician states that claimant is advised to wear a brace on his knee.

The physician states that claimant is able to use his hands/arms normally and his right leg normally. The physician reports there are no mental limitations.

- (d) A November 18, 2008 biopsychosocial assessment was reviewed. The social worker provided the following assessment:

Claimant presents for therapy for added supports. Claimant is returning home from prison and is in need of therapy. He is in the MPRI program and has some extra supports, but admits he has health issues and a history of relapse due to stressors. Claimant lacks health care and needs a hip replacement. Claimant will apply for SSI as he cannot work, and will seek medical assistance from the SSI. Claimant shows he is in the action stage and wants to maintain a present transition back into his family and society without relapse. Claimant referred to OP x2.

The social worker provided the following DSM diagnosis: Axis I—Cannabis dependency; alcohol dependency and cocaine dependency.

Axis V—unknown.

- (e) A March 25, 2009 EMG report was reviewed. The radiologist provided the following summary:

In summary, this is a normal electrodiagnostic evaluation. There is no electrodiagnostic evidence for acute or chronic left lower extremity radiculopathy or for underlying polyneuropathy based on the nerves and muscles sampled today. Clinically, most of his symptoms seem to be related to hip joint pathology. His numbness is consistent with Meralgia Paresthetica, which entraps the lateral femoral cutaneous nerve at the groin ligament. This condition is often associated with weight gain and is usually self limited.

* * *

- (f) A December 15, 2008 radiology consultation report was reviewed.

The radiologist provided the following impression:

- (1) Post surgical changes involving left hip;
- (2) Advanced left hip degenerative joint disease;
- (3) No evidence of degenerative changes involving the left knee.

NOTE: The medical records provide conflicting evidence as to the degree claimant is impaired.

(9) Claimant alleges a severe mental impairment based on his recent psychiatric evaluation provided by [REDACTED]. The psychiatrist provided the following Axis I diagnoses: Major depressive disorder, recurrent, severe with psychotic features, anxiety disorder, NOS, bipolar disorder NOS, and polysubstance dependence. The psychiatrist provided an Axis IV/GAF score of 45. The psychiatric reports of record do show that claimant has a substance abuse issue. However, claimant testified that the psychotropic medications which he is receiving from his [REDACTED] therapist are helping with his mental impairments. Finally, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, which is expected to prevent claimant from performing all customary work functions for the required period of time. The medical reports do establish that claimant is unable to lift more than 10 pounds frequently. Claimant testified that he is unable to stand, walk or sit for extended periods without experiencing pain. The Medical Examination Report (DHS-49), dated November 19, 2008 (states that claimant is able to lift 10 pounds frequently and 20 pounds occasionally. Claimant is able to use his hands/arms normally and he is able to use his right foot normally. There are no limitations on the DHS-49 regarding limitations in claimant's ability to stand, walk or sit. The medical record in this case contains contradictory evidence since some of the reports state claimant is able to function at a basic level while others indicate that claimant is totally unemployable. Thus, there is no consensus on the claimant's physical limitations in the medical record. The medical record does indicate the claimant is unable to climb ladders and lift heavy weights and is unable to perform the work required of a heating/air conditioning installer/technician. At this time, however, there is no medical evidence to establish his disabling condition that totally precludes all work activities (including sedentary work).

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security has not made a decision on the claimant's application.

(12) Recently, claimant was offered full-time employment as a heating and cooling technician/installer. Claimant turned the position down because he is unable to do the required standing and lifting. (The heating/cooling installer/technician position does involve medium/heavy work.)

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant's representative thinks that claimant is entitled to MA-P based on SSI Listing 1.02 (bone disease).

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled sedentary work activities. The department evaluated claimant's impairments using the Listings found in 20 CFR 404, Subpart P, Appendix.

The department determined that claimant is not disabled based on 20 CFR 416.967(a).

LEGAL BASIS

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 claimant's alleged mental impairments limit his 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, 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).

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. 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 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 claimant has impairments which meet the SSI definition of severity/duration. Claimant must establish an impairment which is expected to result in death, has lasted for at least 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 alleges disability based on the Listing 1.02.

Therefore, SHRT evaluated claimant's eligibility under Listings 1.02, 1.04, 1.01 and 12.04. SHRT decided claimant did not meet the applicable 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 loader at a pickle factory. This was medium work.

The medical evidence of record establishes that claimant has a degenerative bone condition which impairs the use of his left knee and left hip. In view of these impairments, claimant is unable to do the heavy lifting required of a loader at a pickle factory.

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

First, claimant alleges a mental impairment: bipolar disorder and anxiety. The psychiatric reports in the record show the following diagnoses: major depressive disorder, anxiety disorder, NOS, bipolar disorder NOS and polysubstance dependence. Claimant testified that the psychotropic medication which the psychiatrist has prescribed is helping his mental impairment. The psychiatric/psychological reports in the record show that claimant's mental condition is not a severe impairment that totally precludes all employment. The psychiatrist who provided a narrative report dated January 15, 2009 does not state, unequivocally, that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on degenerative joint disease of the left hip and knee. Although claimant's degenerative joint disease precludes heavy lifting and continuous standing, the medical evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to his return to work was degenerative joint disease and related 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 his combination of impairments. The claimant performs a significant number of activities of daily living, and has an active social life with his nine-year-old daughter. Recently, claimant received an offer of employment to work as an air conditioning/heating installer/technician. Claimant declined the offer because of his degenerative joint condition. 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 [REDACTED]. Claimant is able to perform work that offers a sit/stand option. Because of the handicapper laws recently enacted in the United States, there are many jobs available for persons with handicaps similar to claimant's, or are confined to a wheelchair.

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 application is, hereby, **AFFIRMED.**

SO ORDERED.

/s/

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

Date Signed: June 22, 2009

Date Mailed: June 23, 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:

