

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: 2009-26992
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 6, 2009
Muskegon 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 Muskegon on May 6, 2009. Claimant personally appeared and testified under oath.

Claimant was represented at [REDACTED]

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 August 19, 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 (March 6, 2009) who was denied by SHRT (June 30, 2009) due to insufficient medical evidence.

(2) Claimant's vocational factors are: age—49; education—11th grade, post-high school education—none; work experience—self employed roofer and siding technician for 37 years.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005, when he was a self employed roofer and siding technician.

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

- (a) Blind in right eye;
- (b) Poor vision in left eye;
- (c) Hepatitis C;
- (d) Five herniated discs;
- (e) Pinched nerve in the neck;
- (f) Takes lots of medication;
- (g) Medications cause drowsiness;
- (h) Hypertension (HMT);
- (i) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 30, 2009)

SHRT decided that Claimant's medical evidence was insufficient to determine his eligibility for MA-P/SDA.

SHRT requested a new Mental Status Examination, with a psychiatrist or a psychologist.

* * *

(6) Claimant lives with his sister, and performs the following Activities of Daily Living (ADLs): dressing, bathing, dishwashing (sometimes), and laundry. Claimant uses a cane approximately 20 days a month; he does not use a walker, a wheelchair or a shower stool. Claimant wears braces approximately 5 times per month. Claimant did not receive inpatient hospitalization in 2008 or 2009.

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

(8) The following medical records are persuasive:

- (a) A March 23, 2009 DDS Psychiatric/Psychological Examination Report was reviewed.

The PhD psychologist provided the following background:

Claimant is a 48-year-old, 7 month old male. Claimant alleges disability due to "I threw my back out and I have bad discs in my back." He said his right eye is out. He has hepatitis C and a bad liver. He says that he has bad neck problems. He said that he is depressed a lot and takes medication for that. Claimant said that he has been having problems with his back since the late 1990's. He said that he worked on houses and did roofing all of his life. He said that he was going up the ladder and something just clicked or snapped in his back, then it has been downhill since then. That was before 2000. He says he is completely blind in his right eye. He got hit with a nail from the nail gun in about 2003 or 2006. He said that he is diagnosed with hepatitis about a year ago. He said that he does not know how long he has had it or how he got it. He said that he has problems with his neck for about the past year. He said he doesn't know if he did something to hurt it or not. Claimant said that he has had problems with depression for about 9 years. He said that he is depressed because he just has a really bad situation and people don't want it around.

* * *

TREATMENT:

Claimant is currently taking Norco for pain, Prozac for depression, Flexorel, high blood pressure pills, and another that he forgot the of.

* * *

He said that he took some medication in Louisiana that he should not have been taking and was hospitalized for an overdose for like 5 days. That was 3 years ago. He thinks that he took an overdose of pain medications. Claimant says that he does not think he has hearing problems. He said he can't see too well out of his left eye, and that he wears glasses. He has glasses, but they're not his prescription.

* * *

PERSONAL HISTORY:

* * *

Claimant said that he went through the 11th grade in school. He said that he left school because he had to work. He did pretty well in school. He was not in special education in school. He said that he can't read too well. He said that he has never gone back to school. He does not have a GED or diploma. He has never gone to college or been in the military.

* * *

Claimant is not presently employed. He said that the last time that he had a job was when he messed his up 3 to 4 years ago. The last place that he worked was Louisiana. He said that he and his brother did roofs on their own for 30 years. He said that he doesn't know what other kind of work he has done other than handyman work. He said that he has done other jobs but "I don't too much remember them." The longest period that he ever worked for one place was "for my granddaddy for about a year." He said that he is not looking for work at all right now. The last time he did a roofing job was 3-4 years ago.

* * *

The PhD psychologist provided the following diagnoses:

Axis I—Pain disorder with psychological and general medical condition; poly-substance dependence (early partial remission) and dysthymic disorder.

Axis V/GAF 54.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected which prevents claimant from performing all customary work functions for the required period of time. Claimant testified that he is depressed. The [REDACTED] psychologist report provided the following diagnoses: Axis I—Pain disorder, with psychological and general medical conditions; poly-substance dependence (early remission); dysthymic disorder. Axis V/GAF—54. The PhD psychologist did not state that claimant was totally unable to work. Also, claimant did not provide a DHS-49D or DHS-49E to show his mental residual functional capacity.

(10) There is no current probative medical evidence to establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time.

(11) Claimant recently applied for federal disability benefits (SSI) 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 based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant's medical information is insufficient to establish disability at this time. The department requested an independent psychological examination.

LEGAL BASE

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;

- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

To determine to what degree claimant's 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, 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 or Pace

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that his combined 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. 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 vocational evidence of record shows claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability test.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Unless an impairment is existed to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months and totally prevents all 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 a SSI Listing.

Therefore, claimant does 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 roofer/siding technician. This work was heavy work.

There is no current probative medical evidence in the record to establish that claimant is unable to do his previous work. However, because claimant has no vision in his right eye and poor vision in his left eye it would be dangerous for him to return to his prior work as a roofer and siding technician due to an ever-present danger of falling.

Since claimant is unable to perform his previous work as a roofer/siding technician, he 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 combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental impairment: depression. The [REDACTED] [REDACTED] contains the following diagnoses: pain disorder, poly-substance dependence and dysthymic disorder. Claimant's Axis V/GAF score is 54 (moderate). The PhD psychologist did not state that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity.

Second, claimant alleges disability based on poor vision, disc herniations, pinched nerve, drowsiness from medications, and high blood pressure. There is no current, probative medical evidence in the record to establish a severe physical impairment that would totally prevent claimant from performing all work activity.

During the hearing, claimant testified that a major impediment to his return to work was 5 herniated discs and associated 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 combined impairments. Claimant currently performs several Activities of Daily Living and has an active social life with his sister.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform 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, 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.

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.

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

Date Signed: April 13, 2010

Date Mailed: April 13, 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 mailing 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/sd

cc:

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