

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: 2009-3306  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 26, 2009  
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 February 26, 2009. Claimant personally appeared and testified under oath.

The department was represented by Robin Stanford (Medical Contact Worker).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on February 27, 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 (July 8, 2008) who was denied by SHRT (November 10, 2008) based on claimant's failure to establish an impairment which meets the severity and duration requirement.
- (2) Claimant's vocational factors are: age--56; education--11<sup>th</sup> grade, post-high school education--GED; work experience--automobile parts packet/assembly line worker, janitor.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005, when he worked on an assembly line packing auto parts.
- (4) Claimant has the following unable-to-work complaints:
  - (a) Neck, back, and shoulder dysfunction;
  - (b) Unable to sit for long periods;
  - (c) Unable to stand for long periods;
  - (d) Receiving physical therapy on his neck, back and shoulders.
- (5) SHRT evaluated claimant's medical evidence as follows:

**OBJECTIVE MEDICAL EVIDENCE (November 10, 2008)**

Consultative examination report of 9/18/2008 indicated claimant has a history of hepatitis C for 40 years with treatment just recently

ending. His blood pressure was mildly elevated, his gait was normal, he could heel-toe walk, and had no difficulty getting on and off the examining table. Strength was normal. Some range of motion of the cervical spine and lumbar spines as well as the shoulders had some loss of motion (page 8).

Medical examination report of 7/10/2008 reported diagnosis of hepatitis C and back pain. Findings were reported as within normal limits. The physician opined there were no functional limitations (page 119).

ANALYSIS: The evidence in the file did not demonstrate any impairments that would pose significant limitations.

Medical opinion was considered in light of CFR 416.927.

The evidence in the file does not demonstrate any other impairments that would pose a significant limitation on claimant's ability to work.

\* \* \*

(6) Claimant lives with his wife and step-daughter. He performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does wear a back brace approximately 12 times a month. Claimant did not receive in-patient hospital services in 2008 or 2009.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is not computer literate. Claimant spends his day reading the Bible and watching TV.

(8) The following medical records are persuasive:

(a) A January 8, 2009 Medical Examination Report (DHS-49) was reviewed. The internist reported the following diagnoses: hypertension, hepatitis C, thyroid dysfunction, low back pain and reduced range of motion of right shoulder.

The internist provided the following functional limitations: claimant is able to lift up to 10 pounds frequently. He is able to stand/walk about 6 hours in an 8-hour day. He is able to sit about 6 hours in an 8-hour day. Claimant is able to use his right hand/arm for simple grasping, reaching, pushing-pulling and fine manipulating. He does not have significant use of his right hand and arm. He is able to use his feet/legs normally to operate foot/leg controls.

The internist does not report that claimant is totally unable to work.

- (b) A November 13, 2008 neurosurgery consult narrative was reviewed.

The neurologist provided the following history:

\* \* \*

Claimant is a 55-year-old African-American man who used to work as a factory worker and janitor, but stopped in September 2005, secondary to injuries and disability. Claimant sustained multiple neck and shoulder injuries, in addition to head injuries, after his several accidents. The last one was in 2005, in which he was stopping at a stop sign when another vehicle was turning to the left from the intersection and was running at 80 mph trying to escape from another person who was tracking him.

\* \* \*

Chief complaint: headache, neck pain radiating down to the right shoulder and arm, and shoulder pain.

History of present illness:

As described above, claimant had multiple injuries at different times causing aggravation of his conditions, including neck pain, headaches, right shoulder pain, mid-back pain and foot pain. Claimant is taking pain medications, but he is still in pain especially in the morning when getting out of bed. His main symptoms today include pain radiating from the neck down to the outer aspect of the arm and forearm and into the middle and index fingers. The pain is worsening on exercising, bending forwards and backwards, and lying down. It is improved by manipulation, pain medications and heat pads. It prevents him from working, sporting, exercising, sitting, and it affects his driving. He has some numbness down his right arm as well as weakness in his right arm. He reports bowel and sexual dysfunction. He has had physical therapy, chiropractic manipulation, and medications with minimal improvement. His BAS is 8/10.

\* \* \*

**NOTE:** The neurologist's clinical diagnosis and residual functional capacity assessment is missing.

- (c) A [REDACTED] [REDACTED] narrative internal medicine report was reviewed. The internist provided the following background:

This 55-year-old African-American male who is seen in the office today for evaluation of his alleged disability due to hypertension, hypothyroidism, low back pain, and hepatitis C infection.

The internist provided the following history:

Claimant thinks that he was diagnosed with hepatitis C 40 years ago. He has been treated with Ribavirin, Pegasus, and Neupogen. This was recently stopped because he was undergoing evaluation for liver cancer. He gets frequent bloating and abdominal pain once every two months. He denies any history of ascities, liver failure, or anemia. He does not get swelling in the legs.

Claimant has hypertension and used to get chest pain, but has not had any in the last three months. He does get dysthymia which occurs in the morning before he takes his medications. He gets dyspnea with two flights of stairs, walking two blocks, and he denies any paroxysmal nocturnal dyspnea or orthopnea. He has no history of myocardial infarction or congestive heart failure. He has been diagnosed with Graves' Disease and was treated with radioactive Iodine and is now hypothyroid.

\* \* \*

The consulting internist provided the following assessment:

This is 55-year-old African-American male with a history of hypertension which is not controlled. He does get some dyspnea on exertion of unclear etiology at this time. He has hypothyroidism; control is unknown at this time.

\* \* \*

He has chronic back pain secondary to multiple motor vehicle accidents. His pain is worse in the morning. He does have decreased lateral flexion on examination today. He has pain with range of motion testing. He has normal strength in the lower extremities and I am unable to illicit reflexes in the lower extremities. He is able to walk on his heels and tip-toes.

He has a Hepatitis C infection, being treated with Interferon. He is currently undergoing evaluation for liver cancer.

\* \* \*

(9) Claimant does not allege disability based on a mental impairment.

(10) The 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.

(11) A July 10, 2008 Medical Examination Report (DHS-49) states that claimant has no physical or mental limitations. The November 13, 2008 neurology consultation report does not report any severe physical impairments that totally preclude all work activity. Based on the medical record, taken as a whole, the Administrative Law Judge does not find persuasive evidence to establish a severe physical diagnosis that would totally preclude all work activity. This medical reports in this record are contradictory. At this time, there is no reliable, uncontroverted medical evidence to establish a severe, disabling physical condition.

(12) 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 the medical evidence of record does not document a mental/physical impairment that significantly limits claimant's ability to perform basic work activities.

The department denied claimant's MA-P/SDA application due to lack of severity and duration under PEM 260/261.

## 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 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. Using 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/SA, 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 Listings. However, SHRT determined that claimant does not meet any of 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 last worked as an assembly line worker, packing auto parts. This was unskilled light work.

The medical evidence of record establishes that claimant has back pain, shoulder pain, thyroid dysfunction, hypertension and hepatitis C. These diagnoses prevent claimant from performing heavy work. Also, they prevent him from returning to his previous work as an assembly line packer because he is unable to stand for the required 8-hour shifts.

### **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/psychological 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 a severe mental impairment.

Second, claimant alleges disability based on neck, back and right shoulder pain, thyroid dysfunction, hypertension and hepatitis C. These diagnoses would preclude claimant from lifting heavy amounts and standing for an entire 8-hour shift. However, they do not preclude sedentary employment with a sit/stand option.

Finally, claimant testified that a major impediment to his return to work was his neck, right shoulder and back pain, secondary to his spinal dysfunction. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes 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 back, neck and right shoulder pain in combination with his other impairments.

The medical/vocational evidence shows that claimant is able to perform sedentary work at this time. This includes employment as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

Claimant currently performs two other activities of daily living, has an active social life with his wife and step-daughter and spends his days reading the Bible and watching TV.

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.

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: July 7, 2009

Date Mailed: July 7, 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

cc:

