

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: 2009-9955
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 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 on April 14, 2009 in Muskegon. Claimant personally appeared and testified under oath.

The department was represented by Kelly S. Curow (FIM).

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/Retro/SDA applicant (September 3, 2008) who was denied

by SHRT (January 28, 2009) based on claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.21 as a guide. Claimant requests retro MA for June, July and August 2008.

(2) Claimant's vocational factors are: age--37; education—high school diploma, post-high school education--none; work experience—machine operator at auto parts company, machine service technician for furniture company, machine service technician for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he was a machine operator at an auto parts company.

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

- (a) Status post back fusion (August 2008);
- (b) Status post broken back (December 2007);
- (c) Seizure disorder;
- (d) Depression;
- (e) Status post psychiatric hospitalization (2008).

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

OBJECTIVE MEDICAL EVIDENCE (JANUARY 28, 2009)

SHRT decided that claimant is not disabled because he is able to perform light work.

SHRT evaluated claimant's impairments using SSI Listings found in 20 CFR 404, Subpart 2, Appendix.

SHRT provided the following comments: Although he fractured his thoracic vertebrae, he should have been capable of performing light work 3 months after that. Once he has recovered from his lumbar fusion, he should be capable of performing a wide range of unskilled light work that does not require working around heights or dangerous machinery.

* * *

(6) Claimant lives with his brother and sister-in-law and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant uses a cane approximately 4 times a month. Claimant does not use a walker, a wheelchair or a shower stool. Claimant does

not wear braces. Claimant did receive inpatient hospital care in 2008 when he was hospitalized for a spinal fusion. Claimant was also psychiatrically hospitalized in 2008.

(7) Claimant has a valid driver's license but does not drive a automobile because of his seizure disorder. The claimant is computer literate.

(8) The following medical records are persuasive:

(a) A September 22, 2008 medical history and physical were reviewed.

The physician provided the following history;

This is a 36-year-old divorced, Caucasian male admitted to [REDACTED] for treatment of major depression with suicidal ideation, after he advised his brother that he was feeling suicidal. His brother brought him to the [REDACTED] where he was evaluated and then admitted to [REDACTED] for further evaluation.

SOCIAL HISTORY:

* * *

Claimant is currently unemployed, but periodically works as a millwright for his brother. He was a regular millwright in [REDACTED] until he lost his job approximately 10 months ago.

* * *

The physician provided the following assessment:

- (1) Major depression with suicidal ideation;
- (2) Seizure disorder;
- (3) Chronic back pain;
- (4) Morton's neuroma, bilateral;
- (5) Hypertension.

(b) A [REDACTED] was reviewed.

The physician reported the following:

Claimant informed me that he has been struggling from lower back pain for quite some time. He reported an initial back injury 5 years ago and since that time, he reports that he has been struggling because he became addicted to pain medications.

* * *

Even though claimant did report depressive symptoms, and pain, it appears that one of his primary difficulties is that he is struggling with his substance abuse and opiate dependence. He also is positive for cannabis as well at the time of admission. Claimant did admit to an abuse problem; however he was extremely minimizing and continued to seek narcotic pain medications up until the time of discharge and was very resistant to leaving without a prescription for them.

* * *

The physician provided the following discharge diagnosis: Axis I—Major Depressive Disorder, cannabis abuse, opiate dependence;

* * *

AXIS V/GAF—45.

- (c) An [REDACTED] was reviewed. The PhD psychologist provided the following background:

36-year-old male alleges disability due to ‘back injury, seizures and depression’ and AOD is 9/15/07.

[REDACTED] note indicates claimant was brought in by his friend and that he was intoxicated and fell on the concrete and he continued to have slurred speech. CT scan was negative and it continued to improve as he became more sober. 5/15/-5/22/2008 discharge reveals claimant presented to the ER with a plan to cut his wrist and reporting that he had overdosed on Flexeril 2 weeks prior. During his stay, he reported that his mood was down and he was unable to cope with his situation and the pain and when discussing discharge, he referenced suicide.

5/17/-5/22/2008 Discharge Summary states: ‘Even though claimant continued to state he was in severe pain, he was observed moving freely about the unit without any apparent difficulty. He was also noted to be playing basketball outside on courtyard breaks. We did discover from his brother that claimant had been melting down his narcotic medications and injecting them even though claimant failed to disclose this to us. Claimant made a vague statement that he might do something if he did not get some pain medications and had to leave. When claimant was questioned about this and what he meant by that he informed me that he might decide to hurt

somebody. It should be noted that claimant was not psychotic in any way.'

DIAGNOSES: Major Depressive Disorder, cannabis abuse, opiate dependence and GAF/45.

9/3/2008 office visit reveals claimant is progressing well and healing from the TLIF procedure. No new complaints, participating in therapy.

ADLs reveal that claimant indicates he watches too much television and tries to help around the house and is able to 'look after my brother's dogs.' He has no difficulty with personal care and grooming, but indicates that he is no longer able to shovel snow or to do all sorts of physical activity and thus, is not able to hold down a job. He can make simple meals for himself, without difficulty and indicates that he can do some light duty work, about an hour a week. He indicates that he was prescribed a cane by the physical therapist; following the use of his walker and that this was in September.

Statements are not credible, as claimant indicates first that he was using a walker, prior to the use of a cane in September, but 9/3/2008, neuro note indicated claimant was using a single crutch and did have a slight gait problem following the TLIF procedure, done 8/22/2008, but was progressing well and having a significant improvement in pain symptoms. In addition, claimant indicates that he has virtually incapacitating pain prior to the TLIF procedure, but Discharge Summary 5/22/2008 revealed that claimant was playing basketball during courtyard breaks, while being observed for possible suicide gesture. He clearly appears to be inaccurate in his statements of pain and discomfort and limited emotional ability.

10/22/2008: CLAIMANT APPEARS TO HAVE FEIGNED SUICIDAL BEHAVIOR AND IDEATION, AS WELL AS DEPRESSION, IN ORDER TO RECEIVE MEDICATIONS THAT HE COULD MELT DOWN AND USE FOR HIS ADDICTION. HE ADMITTED THIS BEHAVIOR TO THE ER ADMITTING [REDACTED]

* * *

(9) The probative psychiatric evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for

the required period of time. Claimant reports that he has depression. However, the most recent diagnosis, provided by the PhD psychologist is: Major Depressive Disorder, cannabis abuse, opiate dependence with a GAF of 45. In addition, the consulting psychologist stated: “claimant appears to have feigned suicidal behavior and ideation, as well as depression, in order to receive medication that he could melt down and use for his addiction”. In addition, claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity.

(10) 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. Claimant testified that he had back surgery (fusion) in August 2008 and that he broke his back in 2007. However, the analysis by the PhD psychologist states the following:

Claimant’s statements are not credible as claimant indicates first that he was using a walker prior to the use of a cane in September, but 9/3/2008 neuro note indicated claimant was using a single crutch and did have a slight gait problem following the TLIF procedure, done 8/22/2008, but was progressing well and having a significant improvement in pain symptoms.”

(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 has capacity to perform unskilled light work. Using Med-Voc Rule 202.21, the department thinks that does not meet the MA-P/SDA disability requirements.

The department provided the following comments: Although he fractured his thoracic vertebrae, he should be capable of performing light work 3 months after that. Once he recovered from his lumbar fusion, he should be capable of performing a wide range of unskilled light work, that does not require working around heights or dangerous machinery.

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).

To determine to what degree claimant's alleged mental impairments limits claimant's 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 Functions.**

...**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, fears 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 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. 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 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 machine operator for an auto parts factory. This was light work.

The medical evidence of record shows that claimant should be able to perform light work after he has recovered from his fusion (August 2008). Since it has been approximately 9 months since his surgery and there is no medical evidence in the record that indicates that claimant is totally unable to return to his previous work, he is able to work as a machine operator.

Therefore, claimant does not meet 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/psychological 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 psychiatric reports in the record do not confirm claimant's opinion. The consulting psychologist provided a diagnosis of major depressive disorder, cannabis abuse and opiate dependence. Also, the psychologist reported: "Claimant appears to have feigned suicidal behavior and ideation, as well as depression, in order to receive medication that he could melt down and use for his

addiction". In addition, claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant thinks he is disabled based on his broken back and his August 2008 back fusion. The medical evidence of record shows that claimant is recovering nicely from his surgery and that claimant's back fusion does not currently prevent him from performing all work activities.

Furthermore, there is no medical evidence that claimant's back dysfunction is so severe that he is totally unable to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant performs a significant number of activities of daily living, has an active social life with his brother and sister-in-law, takes care of his brother's dogs and is able to play basketball. 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 theatre, as a parking lot attendant, and as a greeter for [REDACTED].

Finally, it appears from the medical records that claimant has not been truthful with his medical providers.

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: August 3, 2009

Date Mailed: August 4, 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/sd

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