

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: 2009-11693  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 23, 2009  
Gladwin 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, an in-person hearing was held on September 23, 2009, in Gladwin. Claimant personally appeared and testified under oath.

The department was represented by Terri Ehle (ES).

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 3, 2008) who was denied by SHRT (February 25, 2009) based on claimant's ability to perform unskilled work under 20 CFR 416.968(a). SHRT relied on Med-Voc Rule 203.25 as a guide.

(2) Claimant's vocational factors are: age—40; education—10<sup>th</sup> grade; post high school education—none; work experience—chore services provider for his mother.

(3) Claimant is currently performing Substantial Gainful Activity (SGA) as a chore services provider for his mother. He receives a monthly payment (\$143.38 per month) from DHS.

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

- (a) Seizure disorder;
- (b) COPD;
- (c) Hepatitis C;

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

**OBJECTIVE MEDICAL EVIDENCE (February 25, 2009)**

SHRT thinks that claimant is able to perform unskilled work. SHRT evaluated claimant's impairments using the SSI Listings in 20 CFR 404, Subpart P. Claimant does not meet any of those Listings.

SHRT provided the following comments: Claimant had a possible new onset seizure in 11/2008. It is expected that with treatment his seizures will be controlled. He also has diagnoses of Hepatitis C and COPD. On exam, there was no evidence of liver disease and his bilirubin was within normal limits. His lungs were clear. Claimant is capable of simple, unskilled work. Claimant must avoid unprotected heights and dangerous moving machinery. SHRT denied claimant's request for MA-P/SDA using Med-Voc Rule 203.25 as a guide.

\* \* \*

(6) Claimant lives with his mother and father and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), light cleaning, vacuuming, and grocery shopping (sometimes). Claimant uses a cane on a daily basis. He does not use a walker, wheelchair or shower stool. He does not wear braces. Claimant was hospitalized at a prison hospital in 2008 to obtain treatment for chest pain and asthma.

(7) Claimant does not have a valid drivers' license and does not drive an automobile.

(8) The following medical records are persuasive:

(a) A [REDACTED] physical examination report was reviewed.

The physician provided the following diagnoses:

- (1) Adjustment disorder;
- (2) Depression;
- (3) Hepatitis C;
- (4) Chronic obstructive pulmonary disease.

**Note:** The prison physician did not state that claimant was totally unable to work.

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide a clinical assessment from a Ph.D. psychologist or from the psychiatrist. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) The probative 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 reported the following impairments: (a) seizure disorder; (b) COPD; (c) Hepatitis C. Claimant was evaluated by a [REDACTED] physician on [REDACTED]. The following diagnoses were provided: adjustment disorder, depression, Hepatitis C and Chronic Obstructive Pulmonary Disease (COPD). At this time, the medical

records do not establish a severe functional limitation arising out of claimant's physical impairments.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied his application; claimant did not file a timely appeal.

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

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

**DEPARTMENT'S POSITION**

The department thinks that claimant has a Residual Functional Capacity (RFC) to perform unskilled work.

The department denied MA-P/SDA benefits based on Med-Voc Rule 203.25.

**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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists of the MA-P/SDA programs. 20 CFR 416.927(e).

**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 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 medical/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 claimant has impairments which meet the SSI definition of severity/duration. Unless an impairment is expected to result in death, and must have existed, or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments that profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 criteria. Under the *de minimus* rule, claimant meets the severity and duration requirements and the Step 2 disability test.

### **STEP #3**

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

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 is currently employed part-time as a chore services provider for his mother. The Department of Human Services pays claimant \$143.38 a month for his services to his mother.

Since claimant is currently employed as a chore services provider, he is able to perform his current work as a chore services provider on an ongoing basis.

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

First, claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on a combination of physical impairments: seizure disorder, COPD and Hepatitis C. There is no probative medical evidence in the record, at this time, to show that claimant's physical impairments severely limit claimant's ability to function to the degree that he is totally precluded from working.

In summary, claimant currently performs an extensive list of Activities of Daily Living, has an active social life with his parents and works as a chore services provider for his mother. 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, claimant is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied the claimant's MA-P/SDA application under 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: November 25, 2009

Date Mailed: November 30, 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

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cc:

