

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: 2009-12358
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 28, 2009
Genesee 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 28, 2009 in Flint. Claimant personally appeared and testified under oath.

The department was represented by Linda Onufry (FIS).

The Administrative Law Judge 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 (July 14, 2008) who was denied by SHRT (February 19, 2009) due to the claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for April, May and June, 2008.

(2) Claimant's vocational factors are: age—54; education—high school diploma; post high school education—one semester; work experience—machine operator, ██████████ assembly line worker, bakery worker.

(3) Claimant has not performed substantial gainful activities (SGA) since 2007 when he worked for ██████████ as a machine operator.

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

- (a) Hepatitis C;
- (b) Asthma;
- (c) Glaucoma;
- (d) COPD;
- (e) Deep depression.

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

OBJECTIVE MEDICAL EVIDENCE (██████████)

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's eligibility using the applicable SSI listings at 20 CFR 404, Subpart P, and Appendix. SHRT decided the claimant does not meet any of the applicable listings. SHRT denied eligibility based on claimant's ability to perform normal work activities under 20 CFR 416.920(c).

(6) Claimant lives in a van parked at his niece's house and performs the following activities of daily living: dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant uses a cane approximately five times a month. Claimant does not use a walker, wheelchair or shower stool. Claimant does not wear braces. Claimant received inpatient hospital care in ██████████ to obtain treatment for chest pains.

(7) Claimant has a valid drivers' license but does not drive. Claimant is not computer literate.

(8) The following medical reports are persuasive:

(a) An [REDACTED], Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses:

- (1) Hepatitis C;
- (2) Asthma;
- (3) Arthritis;
- (4) Glaucoma;
- (5) Substance abuse;
- (6) GERD.

The physician reported the following physical limitations: claimant is able to lift ten pounds frequently and 20 pounds occasionally. He was able to stand/walk at least two hours in an eight-hour day; he was able to sit about six hours in an eight-hour day. He is able to use to his hands/arms normally. He is able to use his feet/legs normally.

The physician reported no mental limitations.

(b) An [REDACTED] Medical Needs form (DHS-54A) was reviewed. The physician provided the following diagnoses:

- (1) Hepatitis C;
- (2) Rheumatoid arthritis;
- (3) Asthma;
- (4) GERD.

The physician reported that claimant does have a medical need for assistance with activities of daily living. The physician reported that claimant is not able to work at his usual occupation. He is able to work at any job, as long as it does not involve strenuous physical activity and provides a sit-stand option.

(c) A [REDACTED] psychological evaluation was reviewed.

The Ph.D. psychologist provided the following background:

This examiner began the interview asking claimant to describe his disability and he said that he developed COPD, 'about 9 or 10 years ago.' He said, 'It tires me out real easily; I get winded all the time.' He then said, 'I think I got rheumatoid arthritis, next I was suffering with it for a long time, but I was just diagnosed a few years ago. He said because of drug use he became infected with Hepatitis C. He noted that his physician did not treat him for this and claimed, 'he just acted like it was a cold and never mentioned it until a year ago...

Claimant also said he has glaucoma in both eyes and used eye drops, but needs surgery on his eyes to correct this. When asked about substance abuse, he said he has never been to formal treatment and never tended any 12-step meetings. He said he used alcohol last Friday and denied drug use for the past year. He was told that the collateral information provided noted he used heroin last May and he said, 'Oh, I thought you meant on a regular basis, any at all, a few months (ago).'

* * *

Claimant was then asked to finish the sentence, 'I can't work because,' and he said, 'I can't work because I don't know how to do shit.' He was asked to elaborate and said he said that he spent most of his life locked up, he never received any job training or coping skills. He said, 'If I have to put a job application into a computer, I just turn about and leave.'

* * *

Claimant stated he completed one semester of college and noted he has tried to re-enter college since his last release, but he says he does not know how to register through the computer and he said, 'I gave up on it.'

WORK HISTORY:

After high school, claimant said he worked at a few bakeries and at [REDACTED] for a couple of weeks over one summer. Between his incarcerations, he said he held odd jobs, one time in a small factory, another time to temporary placement agencies, also adding some small factory jobs. Since 2006, his last release, he said he worked at other small factory jobs for five or six months, and he said he lost his transportation and had to quit. After this, he said he worked at a tubing company and worked for a couple of months, but was fired for absenteeism. This was last September [2007] and he has not worked since.

* * *

The examiner asked claimant if a job were currently available that he could perform, based on his education and experience and ability, would he take the job tomorrow. Claimant said, 'Yes.' When asked if anything would prevent him from doing this, claimant said, 'I am not qualified like machine operator, I cannot stand up all the time, and most of my jobs have been standing up in front of a machine all day.'

The Ph.D. psychologist provided the following diagnosis:

Claimant presents as someone who has a long history of untreated substance abuse. He did not display any other psychological/psychiatric disorder.

DIAGNOSIS:

Axis I—opioid abuse;
Axis V/GAF--55

(9) The probative psychological 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 thinks he has deep depression. The report, dated

██████████ by the ██████████ reports the following diagnoses: Claimant presents as someone who has a long history of untreated substance abuse. He did not display any other psychological/psychiatric disorder. The DSM Axis I diagnosis is: Opiate abuse. The consulting psychologist did not state that claimant is totally unable to work due to his mental impairments. 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 expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that he has Hepatitis C, asthma, glaucoma, and COPD. The Medical Examination Report (DHS-49) provides the following diagnosis: Hepatitis C, asthma, rheumatoid arthritis, glaucoma, substance abuse and GERD. The physician also submitted a Medical Needs form and states that claimant is able to work as long as he has a sit-stand option and is not required to perform strenuous physical labor on a continuous basis.

(11) There is no current, probative medical evidence to establish that claimant is totally unable to work based on the combination of his mental impairments based on claimant's combined exertional impairment.

(12) Claimant recently applied for federal disability benefits from 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 is able to perform normal work activities. The department evaluated claimant's impairments using the SSI listings. The department decided that claimant does not meet any of the applicable listings.

Based on claimant's vocational profile [individual approaching advanced age, 54, with a high school education and one semester of college, and work experience as a machine operator and bakery worker] the department denied disability benefits based on claimant's ability to perform normal work activities, as long as they do not involve continuous strenuous labor and continuous standing.

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 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 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 that claimant is not 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, has existed 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 Step 2 disability test.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments and 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 last worked as a machine operator. He has also worked on a [REDACTED] assembly line and as a bakery worker. Claimant's previous jobs were light work.

The medical evidence of record establishes that claimant is not able to do work that requires intensive physical exertion or continuous standing.

Since claimant's last work as a machine operator, requiring continuous standing, he was unable to return to his previous work. 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 a preponderance of 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 a mental impairment: deep depression. The psychological report in the record provides the following diagnosis: opioid abuse and GAF of 55. The Ph.D. psychologist did not report 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 Hepatitis C, asthma, and rheumatoid arthritis. The physician who evaluated claimant reports that he is able to lift 20 pounds occasionally, stand two hours in an eight-hour day and sit about six hours in an eight-hour day. He is able to use his hands/arms and his feet/legs normally. Although claimant is precluded from strenuous physical activity and continues standing, the medical evidence of record does not show that he is totally unable to perform any work.

Third, claimant testified that a major impediment to his return to work was with the swelling and pain in his bilateral feet which occurs when he is required to stand for an eight-hour shift. Unfortunately, evidence of pain/swelling, alone, is insufficient to establish disability for MA-P/SDA services.

The Administrative Law Judge concludes that claimant's testimony about his foot/leg dysfunction 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. Claimant performs, or is able to perform a significant number of activities of daily living, has an active

social life with his niece and demonstrates the ability to be resourceful and creative by taking care of himself on a daily basis.

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 that does not require extensive physical activity or extensive standing. 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



Based on this analysis, the department correctly denied 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 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: June 8, 2009

Date Mailed: June 8, 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:

