

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: 2009-13274
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 6, 2009
Antrim County DHS

ADMINISTRATIVE LAW JUDGE: Robert Chavez

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 hearing was held on May 6, 2009.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

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 applied for MA-P and SDA on 11-19-08.
- (2) Claimant is 48 years old.
- (3) Claimant has a 10th grade education with a history of special education.

(4) Claimant is unable to read and write, and has serious trouble with basic math skills.

(5) Claimant is not currently working.

(6) Claimant has a prior work history consisting of tree trimming and yard work, operating heavy machinery in oil fields, and road construction work.

(7) Claimant performed all jobs at a heavy or very heavy exertional level.

(8) Claimant has been diagnosed with bilateral carpal tunnel syndrome.

(9) Claimant's doctor reports that he has had surgery on both wrists, but significant numbness and pain continues.

(10) Objective medical testing by [REDACTED], contracted by Michigan Rehabilitation Services on 10-6-08 gave claimant an isometric grip strength below the 10th percentile of normal, fine motor speed below average, and a lifting ability limited to 5lbs or less, occasionally.

(11) Based on that assessment, MRS determined that claimant retained an RFC for 1-2 hours a day of sedentary work with a break every 15 minutes; it further determined that this was not enough to qualify claimant for work and subsequently dismissed him from the program.

(12) Claimant has also been diagnosed with cervical spondylosis at the C4-5 level.

(13) Claimant has a history of back problems and pain in his left sacroiliac joint in relationship to this problem.

(14) A MRI and neurosurgery evaluation in 2007 stated that claimant would not benefit from surgical interventions to treat this pain.

(15) Claimant is unable to sit for long periods of time due to this problem.

(16) A Department requested IQ test on 6-3-08 concluded that claimant had a verbal IQ of 68, a performance IQ of 69 and a full scale IQ of 66.

(17) This testing was considered valid, and placed claimant in the mildly mentally retarded range of intellectual functioning with an overall IQ of 66.

(18) A Department requested psychological report, dated 5-15-08, diagnosed claimant with sub-par cognitive functioning, with avoidant personality features, and gave claimant a GAF of 40.

(19) A [REDACTED] of 4-4-08 diagnosed claimant with an adjustment disorder, provisional mild mental retardation and a GAF of 42.

(20) A DHS-49E filed by an independent consulting examiner on 6-3-08 concluded that claimant was markedly limited in the ability to carry out detailed instructions, the ability to maintain concentration, persistence and pace for extended periods, the ability to sustain an ordinary routine without supervision, the ability to work in coordination or proximity to others, the ability to complete a normal work day without interruptions from psychologically based symptoms, and the ability to interact appropriately with the general public.

(21) On 1-12-09, the Medical Review Team denied MA-P and SDA, stating that claimant had a non-exertional impairment and was capable of performing other work.

(22) It is unknown whether a listings level impairment was even considered.

(23) On 1-20-09, claimant filed for hearing.

(24) On 3-16-09, the State Hearing Review Team denied MA-P, Retro MA-P (though claimant did not apply) and SDA, stating that claimant was capable of other work.

(25) No mention of claimant's IQ scores was made.

(26) SHRT relied entirely on a 2 page, 1 hour internist exam that found claimant "quite functional". No mention was made of the numerous tests and other consultations done by the Department that determined otherwise.

(27) On 5-6-09, a hearing was held before the Administrative Law Judge. Claimant requested an extension of the record to submit a letter from his doctor.

(28) Claimant returned these documents after some delay, and the record was resubmitted to SHRT.

(29) SHRT stated that the letter made no particular difference in their decision.

(30) This decision mentioned the IQ scores, but declared they were not particularly relevant in light of claimant's work history.

(31) Furthermore, SHRT declared claimant's doctor's opinion, based on the Department and MRS' own objective tests that found claimant to be capable of less than sedentary work to be "subjective".

(32) SHRT determined that claimant was capable of light work and denied disability, but did not cite a vocational rule.

CONCLUSIONS OF LAW

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).

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).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented more than sufficient evidence of a chronic wrist injury that has more than a minimal effect on the claimant's ability to do basic work activities. The Department's own examination, as well as examinations from Michigan Rehabilitation Services, conducted through scientific tests that objectively measured such things as claimant's isometric hand grip strength, dynamic hand grip strength, fine motor coordination, and lifting ability, state that claimant has severe restrictions in his functional capacities to do physical activities, lifting, gripping, handling and manipulation. Claimant's grip strength was shown to be in the 10th percentile for his normal age group. Claimant's fine motor coordination was significantly below average. Additionally, claimant's lifting ability was scientifically shown to be limited to the occasional five pounds, but no frequent lifting of any sort.

Furthermore, the great weight of the evidence shows that claimant's intellectual problems provide more than minimal difficulty in accomplishing work related activities. A Department administered IQ test gave claimant a full scale IQ score of 66. A Mental Residual Functional Capacity Assessment, performed by an independent examination on the behest of the Department, showed that claimant had markedly limited capabilities in several categories, including 1) the ability to carry out detailed instructions; 2) the ability to maintain attention and concentration for extended periods; and 3) the ability to complete a normal work day and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. Claimant was also found markedly limited in several other categories and moderately limited in most other categories. The only categories that the independent examiner found claimant to have few limitations were in the category of remembering locations and procedures, the ability to understand and remember one or two step instructions, and the ability to carry out simple one or two step instructions.

These limitations are both severe and create significant impairments in claimant's functioning. Thus, claimant easily passes Step 2 of our evaluation.

It is worth noting that both MRT and SHRT agreed that claimant possessed an impairment considered severe enough to get past this step. This fact is important, considering the puzzling dispensation of the next step.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment.

Appendix 1 of Subpart P of 20 CFR 404, Section 12.00 has this to say about mental disorders:

For (12.05) paragraph C, we will assess the degree of functional limitation the additional impairment(s) imposes to determine if it significantly limits your physical or mental ability to do basic work activities, i.e., is a "severe" impairment(s), as defined in §§ 404.1520(c) and 416.920(c). If the additional impairment(s) does not cause limitations that are "severe" as defined in §§ 404.1520(c) and 416.920(c), we will not find that the additional impairment(s) imposes "an additional and significant work-related limitation of function," even if you are unable to do your past work because of the unique features of that work;

12.05 *Mental retardation:* Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied...

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.

The listings of this section clearly define a listings level disability as having a full scale IQ in the 60s and an additional severe impairment, as defined by step 2 of our sequential disability process. The Department's own disability examiners show claimant to have a full scale IQ score of 66. Other reports in the file show that this condition has been present for the claimant's entire life. Claimant testified that he was in special education in school, and was not able to continue past the 10th grade. Therefore, the evidence clearly supports onset of this impairment before the age of 22.

Furthermore, claimant's well documented carpal tunnel syndrome, as stated above, clearly is a severe impairment under step 2 of the regulations. Scientific testing shows that this impairment has more than a minimal impact on basic work activities. Claimant is markedly impaired from lifting, gripping and fine manipulation. This is enough to satisfy the listings requirement of step 3, and a finding of disability is directed.

This is puzzling in light of both MRT and the SHRT decision, where they clearly acknowledged claimant's IQ scores—MRT by acknowledging claimant's "non-exertional limitation", and SHRT by explicitly stating the IQ scores. Given that they also found that claimant had a severe impairment with regard to his carpal tunnel syndrome and back impairments, the Administrative Law Judge cannot understand the finding of not disabled. This could only be accomplished if both departments ignored the listings regulations.

MRT and SHRT claim that all listings were consulted; however, given the extremely clear, binary nature of this particular listing, the undersigned has significant reason to doubt that claim. The listings clearly state that an IQ in the 60s, plus an additional severe impairment, directs a finding of disabled. MRT and SHRT acknowledged that claimant had an IQ in the 60s, and an additional severe impairment. Therefore, a finding of not disabled is objectively contrary to law, and gives extreme doubt as to whether the examiners in this case ever even looked at the listings, much less considered them.

With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As claimant meets the federal standards for SSI disability, as addressed above, and alleges an onset date of 2007, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby,
REVERSED.

The Department is ORDERED to process claimant's MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in August, 2010.

/s/ _____
Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 18, 2009

Date Mailed: August 19, 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 receipt date of the rehearing decision.

RJC/cv

cc:

