

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: 2009-15225  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 4, 2009  
Saginaw 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 June 4, 2009 in Saginaw. Claimant personally appeared and testified under oath.

The department was represented by Connie Herman (ES).

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/SDA applicant (November 7, 2008) who was denied by SHRT (March 13, 2009) based on claimant's ability to perform medium unskilled work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age--42; education—11<sup>th</sup> grade, post-high school education--none; work experience—machine operator for [REDACTED], self-employed home improvement technician, school bus driver and shipping dock worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since January 2007 when he worked as a machine operator for [REDACTED].

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

- (a) Chronic migraine headaches;
- (b) Seizures;
- (c) Tremors of the right hand;
- (d) Unable to work without becoming greatly fatigued;
- (e) Is receiving steroid shots.

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

**OBJECTIVE MEDICAL EVIDENCE (MARCH 13, 2009)**

SHRT decided that claimant was able to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28. SHRT evaluated claimant's disability using the SSI Listings in 20 CFR 404, Subpart P, Appendix. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on 20 CFR 416.967(c) and (a).

(6) Claimant lives with his parents and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping (sometimes). Claimant uses a cane approximately 18 times in a 30 day period. He does not use a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant received inpatient hospital care in 2008 for migraine headaches. He received inpatient hospital care in 2009 for head pain and chest pain.

(7) Claimant does not have a valid driver's license due to doctor's orders. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] narrative report was reviewed.

The physician provided the following background:

This is a 41-year-old gentleman who returns with a history of migraine headaches. Greater occipital nerve blocks have provided 75% relief or more in the past; however, this last injection did not seem to last as long as normal. The pain today is across the occipital region bilaterally; it is 9/10 in intensity, sharp and worse with sneezing. Vicodin is being used, 1½ tablets per day. Claimant has had a history of seizures and has had black-outs frequently. He will be following-up with his family doctor for evaluation.

ASSESSMENT:

- (1) Degenerative changes in mild disc kinesia at C6-C7 with compression of the neuroforamin;
- (2) Bilateral occipital neuralgia.

\* \* \*

(b) An [REDACTED] letter was reviewed. It states as follows: Claimant has been under my care for almost a year for seizure disorder, depression, chronic migraine headaches and cervical degenerative disc disease with cervical neuropathy resulting in epidural injections under the care of [REDACTED]. The above conditions mentioned, severely limits claimant's ability to be fully or part-time employed.

\* \* \*

(c) An [REDACTED] report was reviewed.

The physician provided the following background.

This is a 41-year-old gentleman who returns with a history of migraine headaches. He underwent greater occipital nerve blocks with approximately 75% relief for 2 weeks.

He is currently rating his pain today as 7/10, deep in his temples, but also across the entire occipital region.

ASSESSMENT:

- (1) Degenerative changes and mild dyskinesia at C6-C7;
- (2) Bilateral occipital neuralgia.

- (d) A May 27, 2008 medical report was reviewed.

The physician provided the following background.

This is a 41-year-old gentleman who presents with a history of migraine headaches. Claimant was on stairs, approximately 13 months ago, when a fall occurred. Claimant fell down the stairs and struck a door at the end of the stairs, bursting the door open; at the time there were seizures which occurred prior to assessment with the Emergency Room paramedics. Claimant was taken to the hospital and evaluated for approximately 3 to 4 days. Prior to this, there was an episode which occurred with the upper right extremity. Weakness and tremors began.

\* \* \*

The physician provided the following assessment: Degenerative changes with mild disc kinesia at C6-C7 with compression of the neural foramin at C6-C7.

(9) Claimant does not allege disability based on a mental impairment. Claimant did not provide any probative psychiatric reports. Claimant did not provide a DHS-49D or a 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 is unable to work due to chronic migraine headaches, seizures and tremors of the hand. The medical reports show that claimant has mild dyskinesia and bilateral occipital neuralgia. Claimant's family practitioner opined on October 17, 2008 that "due to the above conditions, claimant's employability was severely limited.

This medical source opinion will not be given controlling weight because it is contrary to the great weight in the evidence in the record as a whole.

(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 the Residual Functional Capacity (RFC) to perform unskilled medium work. The department relied on Med-Voc Rule 203.28.

The department thinks that claimant should avoid work around dangerous heights, moving machinery or unprotected heights due to his history of seizures.

### **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 disabled 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, 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 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. The department reviewed claimant's disability based on the Listings at 20 CFR 404, Subpart P, Appendix. Claimant does not meet any of 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 a RV manufacturer.

Because of claimant's history of seizures, he is not able to work around dangerous moving machinery.

For this reason, claimant is not able to return to his previous work as a machine operator. 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 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 mental impairment. There are no probative psychiatric reports in this record. Also, claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on seizure disorder, migraines, cervical disc disease and cervical neuropathy. A recent medical report (November 19, 2008) provided the following assessment: (1) Degenerative changes and mild dyskinesia at C6-C7; (2) Bilateral occipital neuralgia. Claimant's family physician opined that he is totally unable to work. However, claimant's medical source opinion (MSO) is inconsistent with the great weight of the medical evidence.

Claimant testified that a major impediment to his return to work was his chronic migraine headaches and head pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is 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 currently performs an extensive list of activities of daily living, has an active social life with his parents and is computer literate.

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].

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: September 16, 2009

Date Mailed: September 16, 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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