

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: 2009-16022

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 21, 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, an in-person hearing was held on July 21, 2009, in Saginaw. Claimant personally appeared and testified under oath.

The department was represented by Monica Facundo, 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 (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 (October 6, 2009) who was denied by SHRT

(March 24, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.00 as a guide.

(2) Claimant's vocational factors are: age—46; education—9th grade [REDACTED] post high school education—none; work experience—a cook at the [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since 2007 when he worked as a cook at the [REDACTED].

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

- (a) Status post right shoulder gunshot wound;
- (b) Right shoulder pain;
- (c) Status post motor vehicle accident;
- (d) Back pain;
- (e) Depression;
- (f) High blood pressure (HNT);
- (g) Diabetes;
- (h) Poor vision in left eye;
- (i) Hearing dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (March 24, 2009):

SHRT decided that claimant was able to perform unskilled light work. SHRT evaluated claimant's disability using all Listings at 20 CFR 404, Subpart P, Appendix.

SHRT decided that claimant does not meet any of applicable SSI Listings. SHRT denied disability based on claimant's ability to perform unskilled light work under 20 CFR 416.967(b). SHRT relied on Med-Voc Rule 202.20.

(6) Claimant lives with his aunt and performs the following activities of daily living (ADLs): Dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming (sometimes), laundry, and grocery shopping. Claimant does not use a cane, walker, or wheelchair or shower stool. He does not wear braces. Claimant was not hospitalized in 2008 or 2009.

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

Claimant is not computer literate.

- (8) The following medical reports are persuasive:

- (a) A [REDACTED] psychiatric/psychological consultation report was reviewed.

The Ph.D. psychologist provided the following history:

Complaints and Symptoms:

Claimant is a 46-year-old [REDACTED] who came to the evaluation unaccompanied. A friend transported him to the evaluation because he has never had a Michigan drivers' license because he has been in and out of prison.

* * *

This is his first application for disability. When asked for the reason for evaluation, he indicated that he struggled from the effects of having a bullet in his shoulder. He feels that this makes him constantly fatigued. He is also diabetic, blind in left eye, deaf in left ear, and has a leaking heart valve. He has struggled with blindness and deafness since the mid 1980's. He also struggles from depressive symptoms that have been present for the past three years. He is uncertain regarding the triggers. Symptoms include being easily irritable, angry, and occasional tearfulness.

TREATMENT/MEDICATIONS:

* * *

Claimant has been attending mental health counseling weekly for the past year. He was psychiatrically hospitalized for suicidal thoughts in 2004. He attended substance abuse treatments in 2007. He underwent surgery on his eye in 1987.

* * *

Claimant attended school through the 9th grade and reported having special education classes.

* * *

He last worked in 2007 as a cook. He held this position for five years and left the employment because he was constantly fatigued. He abused cocaine periodically throughout his life. However, he has been free from use for a couple of months.

* * *

ADDITIONAL INFORMATION AND SUMMARY:

* * *

Results of the mental status examination revealed significant abnormalities in nearly all areas of mental capacity. He was uncertain regarding how long he has been attending mental health counseling, or how long he has not been using drugs. It is likely that he struggles with intellectual impairment. Cognitive assessment is recommended to quantify his current level of intellectual functioning.

At this time, he meets diagnostic criteria for Major Depressive Disorder. He struggles from depressive symptoms that have been present for the past three years. Symptoms include irritability, occasional tearfulness, helplessness, hopelessness about his future, occasional feelings of worthlessness, social isolation, anhedonia, some occasional diminished libido, decreased motivation, and sleep disturbances (four hours per night).

The Ph.D. psychologist provided the following diagnoses:

Axis I—Major Depressive Disorder, recurrent, moderate; Cocaine dependence, in early full remission.

* * *

Axis V/GAF—45.

- (b) A [REDACTED] physical consultation report was reviewed.

The physician provided the following history:

This is a 46-year-old [REDACTED] male with a history of hypertension, diabetes mellitus, who comes in for a disability evaluation. He used to work at various jobs. The last time he worked was about two years ago as a cook, which he did for three years. This was interspersed by repeated incarcerations. In the 1980's, he had a bullet injury and does not remember exactly where the exact injury wound is, but it was retained in the body and he was told it was somewhere in the abdomen. He has some non-specific abdominal pain when he lies down at nighttime. He wakes up and has to go to the bathroom and

then he feels better. He has had hearing loss for sometime. He wears a hearing aide with good relief. He has had asthma all his life, and he uses inhalers on a regular basis. He does not use steroid inhalers, but apparently uses a rescue inhaler almost everyday. He feels short of breath, but no wheezing. He does not have any chest tightness prior to that. He says that when he takes the inhaler, his shortness of breath gets better. He was told that he has a leaky heart valve, but nothing needs to be done at this point. He also has had hypertension and diabetes mellitus type II, non-insulin dependent for a few years.

* * *

Usually his blood pressure is high and uncontrolled. He does not have a significant difficulty with ambulation. He does not have orthopnea, syncope, palpitations, or chest pain. He can walk for at least three to four blocks before he gets short-winded. He is independent of activities of daily living. He has a history of depression and anxiety for which he takes medication.

The physician provided the following impressions:

- (1) Hearing loss relieved by hearing aids;
- (2) Hypertension, uncontrolled (190/110);
- (3) Bronchial asthma, mild to moderate;
- (4) Diabetes mellitus type II, noninsulin dependents;
- (5) Depression/anxiety disorder;
- (6) Insomnia;
- (7) Retained bullet intra-abdominally from gunshot wound in the 1980's;
- (8) Non-specific abdominal pain.

NOTE: Neither the physician or the Ph.D. psychologist reported that claimant is totally unable to work.

(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 depression. Claimant's reports of depression are corroborated by the consultative psychological evaluation (February 11, 2009). The consulting psychologist provided the following diagnoses: Major Depressive Disorder, recurrent, moderate; cocaine dependence, in early full remission. Axis V/GAF—45. The

consulting psychologist did not state that claimant is unable to work due to his combined mental impairments. Claimant did not provide a DHS-49D or DHS-49E to establish a 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 reports status post right shoulder gunshot wound, right shoulder pain, back pain, hypertension, diabetes, poor vision in left eye and poor hearing in left ear. The consulting physician provided the following diagnoses: hearing loss relieved by hearing aids, hypertension, bronchial asthma, diabetes mellitus type II, insomnia, retained bullet intra-abdominally from gunshot wound in 1980's, and nonspecific abdominal pain. The consulting physician did not report that claimant is totally unable to work due to his physical impairment.

(11) Claimant recently applied for federal disability benefits. 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 has a residual functional capacity to perform light unskilled work. 20 CFR 416.967(e).

The department evaluated claimant's impairments using all the SSI Listings at 20 CFR 404, Subpart P, Appendix.

The department decided that claimant does not meet any of the relative SSI Listings.

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 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 and 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 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 disabled for MA-P/SDA purposes.

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 currently performing SGA. Therefore, claimant meets the Step 1 disability test at this time.

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, 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, the 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.

SHRT evaluated claimant's disability using the appropriate SSI Listings. SHRT concluded that claimant does not meet any of the applicable 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's last work was as a cook at a kitchen restaurant. He has right shoulder pain, back pain, hypertension, diabetes, poor vision and hearing dysfunction.

The combination of claimant's current physical impairments preclude him from performing his previous medium work as a cook.

Since claimant is no longer able to work as a cook, he is unable to return to his previous work, therefore, 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 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 depression. The report submitted by the consulting Ph.D. psychologist show that claimant has depression and cocaine dependence, in early full remission. The Ph.D. psychologist did not report that claimant was totally unable to

work due to his combination of mental impairments. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on right shoulder dysfunction, right shoulder pain, back pain, hypertension, diabetes, and poor vision (left eye) and poor hearing (left ear). Although claimant's combination of physical impairments do preclude him from performing medium work, the medical evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to his return to work was his shoulder and back 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 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 an extensive number of activities of daily living (ADLs), has an active social life with his aunt and his cousin.

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 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 18, 2009

Date Mailed: November 18, 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:

