

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: 2009-22468
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 9, 2009
Mecosta 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 July 9, 2009, in Big Rapids. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED]

[REDACTED].

The department was represented by Pam Lewis (FIM).

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 (January 22, 2009) who was denied by SHRT (June 1, 2009) based on claimant's ability to perform unskilled sedentary/light work. SHRT relied on Med-Voc Rule 202.17 as a guide.

(2) Claimant has not performed substantial gainful activity (SGA) since September 2008 when he worked for [REDACTED] as a long haul driver.

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

- (a) Anxiety/depression;
- (b) Degenerative disc disease;
- (c) Bone spurs;
- (d) Pinched nerves with pain;
- (e) COPD;
- (f) Poor vision;
- (g) Sleep dysfunction;

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

OBJECTIVE MEDICAL EVIDENCE (June 1, 2009):

SHRT decided that claimant was able to perform unskilled sedentary/light work. SHRT relied on Med-Voc Rule 202.17 as a guide. SHRT evaluated claimant's impairments using SSI Listings 1.01, 3.01, 2.01 and 12.01. SHRT decided the claimant does not meet any of the applicable SSI listings. SHRT denied disability based on 20 CFR 416.968(a) due to claimant's ability to perform sedentary/light work.

(5) Claimant is 44 years old. Claimant lives at various friends' houses and performs the following activities of daily living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, laundry, and grocery shopping (sometimes). Claimant does not use a cane, a walker, a

wheelchair or a shower stool. He does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

(6) Claimant has a CDL/Chauffeur's license. He drove himself to the hearing.

Claimant is computer literate.

(7) The following medical reports are persuasive:

(a) A [REDACTED] was reviewed. The physician provided the following current diagnoses:

- (1) Degenerative disc disease/cervical;
- (2) Left shoulder pain;
- (3) General anxiety disorder;
- (4) COPD.

The physician reported that claimant was able to lift less than ten pounds occasionally. The physician did not report any limitations on standing/walking or sitting. He did report that claimant is able to use his hands/arms for simple grasping and fine manipulating. Unable to use them for reaching or pushing-pulling. Claimant is able to use his feet/legs normally.

(b) An [REDACTED] office note was reviewed.

The physician provided the following background:

This 43-year-old male presents day for follow-up—evaluation of COPD. He also presents for follow-up evaluation of cervical pain. Left neck and left shoulder are very painful. He cannot get comfortable when he is in bed. Numbness in left arm and to hand. Staying clean.

Denies suicidality although he admits that he was suicidal in the past. He is clean for 12 months, the last time he used was New Year's.

The physician provided the following impressions:

- (1) Acute bronchitis, exacerbation of chronic bronchitis;

- (2) Cervical spondylitis with intermittent numbness left hand;
- (3) Left shoulder pain;
- (4) Generalized anxiety disorder;
- (5) Tobacco abuse.

NOTE: The physician did not state that claimant was totally unable to work.

(8) The probative psychiatric 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 testified that he has anxiety and depression. The [REDACTED] states that claimant has general anxiety. Claimant did not provide a clinical assessment from a Ph.D. psychologist or a psychiatrist. Claimant did not provide a DHS-49D or DHS-49E to establish his medical residual functional capacity.

(9) The probative medical evidence does not establish an acute (exertion) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that he has degenerative disc disease, bone spurs, pinched nerves with pain, COPD, poor vision and sleep dysfunction. The [REDACTED] [REDACTED] impression was: (1) acute bronchitis, exacerbation of chronic bronchitis; (2) cervical spondylosis with intermittent numbness in left hand; (3) left shoulder pain; (4) generalized anxiety disorder; (5) tobacco abuse. The reporting physician did not state the claimant was totally unable to work.

(10) Claimant recently applied for federal disability benefits from the Social Security Administration. Social Security denied claimant's application for SSI. 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/sedentary unskilled work.

The department thinks that claimant's impairments do not meet SSI Listings 1.01, 3.01, 2.01 or 12.01.

The department denied MA-P/SDA based on claimant's ability to perform unskilled sedentary/light work under Med-Voc Rule 202.17.

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. SHRT evaluated claimant's impairments using SSI Listings 1.01, 3.01, 2.01 and 12.01. SHRT decided that claimant does not meet the applicable SSI 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 driving a truck, long haul. This work was light work.

The medical evidence of record establishes that claimant has a significant breathing impairment, as well as degenerative disc disease. These impairments, in combination, prevent claimant from sitting for extended periods of time behind the wheel of a truck.

Since claimant is no longer able to perform the functions of a long haul truck driver, he is 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 evidence in the record that his combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on a combination of mental impairments: anxiety and depression. There is no clinical evidence of severe depression or anxiety in this record. The physician who examined claimant on February 20, 2009, indicated that claimant's mental limitations included limited social interaction. However, the physician did not state that claimant was totally unable to work. There is no clinical evidence from a consulting psychologist or psychiatrist in the record. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments: degenerative disc disease, bone spurs, pinched nerves with pain, COPD, poor vision and sleep dysfunction. A recent medical report provided by the physician from Shepherd of Hope Clinic gives the following impressions: (1) acute bronchitis; (2) cervical spondylitis with intermittent numbness in the left hand; (3) left shoulder pain; (4) generalized anxiety disorder; (5) tobacco

abuse. The physician did not state that claimant was totally disabled based on his physical impairments.

Third, claimant testified that a major impediment to his return to work was chronic neck pain, back pain and shoulder 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 a significant number of activities of daily living (ADLs), has an active social life with his daughter, and drives an automobile. Claimant 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 Wal-Mart. Work of this type would provide claimant a sit-stand option.

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 in 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 13, 2009

Date Mailed: November 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 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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