

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: 2009-25097
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 5, 2009
Washtenaw 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 in Ypsilanti on August 5, 2009. Claimant personally appeared and testified under oath.

The department was represented by Mary Louise Batkins (FIM) and Payton Johnson (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on September 5, 2009.

Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. Claimant did not submit any new medical records prior to the record closed date.

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 (April 15, 2009) who was denied by SHRT (June 22, 2009) because claimant failed to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for January, February and March 2009.

(2) Claimant's vocational factors are: age—48; education—11th grade; post high school education—GED; work experience—roofing and siding technician, union brick layer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he was employed as roofing and siding technician.

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

- (a) Status post neck surgery (2000);
- (b) Status post left hip surgery (2006);
- (c) Chronic neck, back and leg pain;
- (d) Left hip dysfunction with pain;
- (e) Status post multiple falls from roofs;
- (f) Hypertension;
- (g) Sleep dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 22, 2009)

SHRT decided that claimant did not submit probative evidence of impairment. SHRT evaluated claimant's impairments using SSI Listing 1.01. SHRT decided that claimant does not meet any of the applicable Listings. SHRT requested additional medical evidence.

* * *

(6) Claimant is homeless and occasionally lives with his sister. He performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping (short periods), vacuuming, laundry and grocery shopping. Claimant uses a cane on a daily basis. He does not use a walker, wheelchair, or a shower stool. Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate. Claimant is not under the care of a psychiatrist, a PhD psychologist or a [REDACTED] therapist.

- (8) The following medical records are persuasive:

- (a) A March 16, 2009 Medical Needs Form (DHS-54A) was reviewed. The physician reports that claimant does not have a medical need for assistance with personal care activities.
- (b) The physician reports that claimant is indefinitely unable to work at his usual occupation. The physician reports that claimant is indefinitely unable to work at any job.
- (c) A consulting physician submitted a Medical Examination Report (DHS-49) dated March 16, 2009.

The physician provided the following current diagnoses:

- (a) Post traumatic arthritis/degeneration of the spine and hip.

The physician provided the following work limitations:

Claimant is able to lift less than 10 pounds occasionally. Claimant is able to stand or walk less than 2 hours in an 8 hour day. Claimant is able to do simple grasping and fine manipulating with his hands/arms. He is able to operate foot controls with his right leg only.

Note: Claimant's treating physician has given less than sedentary work restrictions, based on claimant's physical impairments (arthritis and degeneration of the spine and hip). However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence. Therefore, it will not be given controlling weight.

- (d) A July 16, 2008 DDS Psychiatric/Psychological Report was reviewed.

The PhD psychologist provided the following background:

Claimant is currently receiving FIA and Food Stamps. He is applying for SSD now. He said, "My back, my right knee pops-out, I've had surgery on both arms and have a rod in my left hip." He also has severe psoriasis. He has no feeling or movement in 2 fingers. He had a head injury in 2000. "I go through bouts of depression." He added, "I'm an alcoholic, a recovering alcoholic." He has been sober for 6 months. He used to drink a pint of vodka and 6 to 12 beers a day. He has been drinking off and on "for 25 years."

* * *

Daily Functioning:

* * *

Activities: He does not do much due to pain. He will sit by the pond or the river and listen to his radio. Pain keeps him from riding his bike. He cooks for himself and his sister. He gets Food Stamps and does the shopping. He and his sister share doing the laundry. He goes to [REDACTED] once a week. He can partially meet his basic needs.

The PhD psychologist provided the following diagnoses:

Axis I—Alcohol dependence in early remission; Major depressive disorder, recurrent, mild. Axis V/GAF—55.

- (e) A [REDACTED] narrative examination report was reviewed.

The consulting physician provided the following background:

* * *

Claimant's first issue is that of significant musculoskeletal pain related to multiple traumas. He described having multiple fractures related to different traumas, most of which have been related to his work as a roofer. He worked as a roofer for 18 years and has multiple falls and injuries. He described having had cervical fusion as well as left femur fracture that required surgical fixation. He also describes having had a fracture in his left arm with rods and pins placed. He also had an injury to his right arm when he fell through a window and had an artery severed and nerve injury and surgery related to that.

* * *

Due to all of this, he has chronic neck, back, leg and arm pain.

* * *

His second concern is that of hypertension.

* * *

Social History: He currently smokes a pack per day and drinks a 6-pack of beer a couple of times a week.

The consulting physician reported the following objective information:

* * *

Obvious crepitus and clicking with palpitation of the left hip when placed through range of motion.

ASSESSMENT:

- (1) Hypertension;
- (2) Chronic pain related to multiple musculoskeletal traumas and surgeries;
- (3) Rosacea-appearance;

(4) Psoriasis.

* * *

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to preclude claimant from performing all customary work functions for the required period of time. Claimant reported to the consulting psychologist that he is depressed. The consulting psychologist provided the following diagnosis: Axis I—Alcohol dependence in early full remission; Major depressive disorder, recurrent, mild. Axis V/GAF—50. The consulting psychologist did not state that claimant was totally unable to work. Also, claimant did not provide a DHS-49D or DHS-49E to show 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. While it is true that claimant's treating psyching reports that he is totally unable to work, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record and will not be given controlling weight.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied his application. Claimant did not file 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 a Residual Functional Capacity (RFC) to perform normal work activities. The department thinks that claimant does not meet SSI Listings 1.01.

The department requested additional medical evidence.

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 does 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 mental impairment limits claimant's 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).

(d) Sufficient Evidence:

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) Chronic Mental Impairments:

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

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. PEM 260. "Disability," as defined by MA-P 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 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 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 death, has existed for a continuous period of 12 months, and 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 *de minimus* requirement, claimant meets the Step 2 disability test.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. SHRT evaluated claimant's impairments using SSI Listing 1.01. SHRT decided

that claimant does not meet any of 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 previously worked as a roofer and siding technician. Claimant worked as roofing and siding technician. This was heavy work.

The medical evidence of record shows that claimant is unable to return to his previous work as a roofer and siding technician. Claimant is unable to do the heavy lifting of his previous work as a roofer.

Claimant's treating physician provided the Medical Source Opinion (MSO) that claimant is unable to do even sedentary work. However, because the Medical Source Opinion is not supported by the great weight of the evidence in the record, it will not be given controlling weight. 20 CFR 416.927(c)(2)(3) and 20 CFR 416.927(d). However, since claimant is unable to return to his previous work as roofing and siding technician, he 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 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 a mental impairment. Although claimant told the consulting psychologist that he was occasionally depressed, he did not mention depression at the hearing.

Also, claimant did not submit a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on several physical impairments: Neck, back, and leg pain, status post left hip surgery, hypertension, and sleep dysfunction. Claimant's treating physician opined that claimant was disabled based on these impairments. However, this Medical Source Opinion (MSO) cannot be given controlling weight for the reasons mentioned above. See citation above.

Third, claimant testified that a major impediment to his return to work was his chronic neck/back/leg 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. Currently, claimant performs a significant number of activities of daily living and has an active social life with his sister. 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 was able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter at Wal-Mart.

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: March 29, 2010

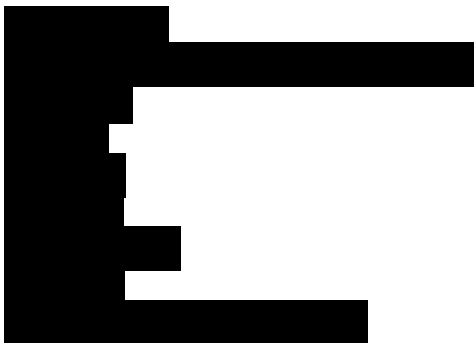
Date Mailed: March 30, 2010

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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