

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: 2009-325
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 2009
Macomb 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 February 11, 2009 in Warren, Michigan.

Claimant personally appeared and testified under oath.

The department was represented by John Fanelli (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on February 12, 2009.

Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

ISSUES

(1) Did the department provide probative psychiatric evidence to show marked improvement in claimant's mental condition; to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

(2) Did the department provide probative medical evidence to show marked improvement in claimant's physical impairment to the degree that claimant is not able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

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 recipient and an SDA applicant who had an eligibility review in July 2008. Claimant continues to receive MA-P benefits.

(2) On August 6, 2008, MRT denied MA-P and SDA due to claimant's ability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.17, as a guide.

(3) On August 6, 2008, the local office notified claimant that MRT denied ongoing MA-P and denied claimant's SDA application.

(4) On August 8, 2008, claimant filed a timely hearing request. The local office deleted the pending closure of claimant's MA-P pending the results of the hearing.

(5) On October 14, 2008, SHRT denied claimant's request for ongoing MA-P and his SDA application for the following reasons:

Claimant is capable of performing light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a).

(6) Claimant's vocational factors are: age—44; education—8th grade; post high school education—certified as a welder until 1983.

(7) Claimant has not performed Substantial Gainful Activity (SGA) since November 2006 when he was a maintenance man/handyman for a doctor's clinic.

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

- (a) Degenerative disc disease of the lumbar spine;
- (b) Thoracic pain;
- (c) Lumbar pain;
- (d) Chronic pain secondary to generative disc disease;
- (e) Disc herniation;
- (f) Passive joint disease;
- (g) Type II diabetes.

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

See the SHRT evaluation at Paragraph #5, above.

(10) Claimant lives with his wife and performs the following Activities of Daily Living (ADLs): dressing, bathing, light cleaning, vacuuming (sometimes), laundry and grocery shopping. Claimant does not use a cane, walker or a wheelchair. He does not wear braces. He uses a shower stool approximately 15 times a month. Claimant was hospitalized for inpatient hospital treatment in [REDACTED]. He was treated for the flu and diabetic complications.

(11) Claimant has a valid driver's license and drives an automobile approximately three times a month. Claimant is not computer literate.

(12) The following medical records are persuasive:

An [REDACTED] Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnosis:

- (a) Type I diabetes mellitus;
- (b) Profound peripheral neuropathy;
- (c) Anxiety;
- (d) Depression;
- (e) Chronic pain syndrome.

- (1) The physician provided the following functional limitations limitations: able to lift less than 10 pounds. Able to stand/walk less than two hours in an eight-hour day. Able to sit less than six hours in an eight-hour day. Not able to use his hands/arms for reaching, pushing-pulling, or fine manipulating. Not able to use his legs to operate foot controls.
- (2) An [REDACTED] psychiatric/psychological examination report (DHS-49D) was reviewed.

The psychiatrist provided the following diagnoses: dysthymia and depression, secondary to chronic pain syndrome; Axis V/GAF—60.

- * * *
- (3) An [REDACTED] mental residual functional capacity assessment (DHS-49E) was reviewed. The psychiatrist reports the following markedly limited mental skills set:
 - (a) The ability to remember locations and work-like procedures;
 - (b) The ability to understand and remember detailed instructions;
 - (c) The ability to carryout detailed instructions;
 - (d) The ability to maintain attention and concentration for extended period;
 - (e) The ability to perform activities within a schedule and maintain regular attendance;
 - (f) The ability to sustain an ordinary routine without supervision;
 - (g) The ability to work in coordination with or proximity to others;
 - (h) The ability to complete an ordinary workday and worksheet without interruptions;
 - (i) The ability to interact appropriately with the general public;
 - (j) The ability to accept instructions and respond appropriately to criticism;
 - (k) The ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes;
 - (l) The ability to respond appropriately to change in the work setting;
 - (m) The ability to travel in unfamiliar places or use public transportation.

- (n) The ability to set realistic goals or make plans independently of others.

(13) The probative psychiatric evidence establishes an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The [REDACTED] mental residual functional capacity reports marked mental limitations in 14 discreet functional skill sets. Based on this report, claimant is not mentally able to perform substantial gainful activity (SGA).

(14) The probative medical evidence establishes an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions. The [REDACTED] Medical Examination Report provides the following diagnoses:

- (a) Type I diabetes mellitus;
- (b) Profound peripheral neuropathy;
- (c) Chronic pain syndrome;
- (d) Anxiety disorder;
- (e) Depression.

The physician who prepared the [REDACTED] medical report stated that claimant's functional limitations were so significant that he is basically unable to work. The current medical records do establish that claimant is unable to perform jobs which require heavy lifting or repeated squatting.

- (15) Claimant's Social Security status is unknown.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

The claimant thinks he is entitled to a continuation of his MA-P, and approval of his SDA application based on the impairments listed on Paragraph #4, above.

In particular, claimant thinks that he has severe mental and physical impairments which preclude Substantial Gainful Activity.

DEPARTMENT'S POSITION

The department evaluated claimant's disability claim using SSI Listings 9.08 and 12.04. The department decided that claimant does not meet either listing and that claimant has not established a severe impairment which precludes all work activity under 20 CFR 416.967(b)/light work and 20 CFR 416.968(a)/unskilled work.

The department denied claimant's request for ongoing MA-P and the addition of SDA based on Med-Voc Rule 202.17 as a guide.

The department did not review claimant's MA-P eligibility using the applicable improvement rules.

LEGAL BASIS

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 alleged mental/physical impairments limit his ability to perform basic work activities, 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, fears 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 and 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).

The department has the burden of proof to show by a preponderance of the medical evidence that claimant's physical/mental impairments have improved to the extent that claimant is now able to perform Substantial Gainful Activity. PEM 260/261. "Disability" as defined by MA-P/SDA 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 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 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 the department has established improvement in claimant's mental/physical impairments to the degree that he is now able to perform SGA.

The department has the burden of proof to show that claimant's mental/physical impairments have substantially improved to the point where claimant can now perform basic work activities.

PHYSICAL IMPAIRMENTS

The medical evidence of record, DHS-49 ([REDACTED]) established that claimant had ongoing physical impairments which have not substantially improved and still prevent substantial gainful employment. Claimant has degenerative disc disease. He also has significant back pain secondary to his disability determination. Claimant's physical impairments clearly prevent him from performing normal work activities including sitting, standing and walking.

The department has not shown that claimant's physical impairments have not improved to the point where claimant is now able to perform Substantial Gainful Activity.

MENTAL IMPAIRMENTS

The department has not established marked improvement in claimant's mental impairments. The DHS-49D ([REDACTED]) and the DHS-49E ([REDACTED]) establish that claimant has 14 areas of marked skilled set limitations. Given claimant's plethora of mental limitations, he is currently unable to perform Substantial Gainful Activities. **The department has not shown that claimant's mental impairments have not improved to the point where claimant is now able to perform Substantial Gainful Activity.**

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established marked improvement in claimant's mental and physical impairments to the extent he is now able to perform Substantial Gainful Activity under PEM 260/261.

Accordingly, the department's denial of claimant's MA-P ongoing eligibility and his SDA application is, hereby, REVERSED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 9, 2009

Date Mailed: March 10, 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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