

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: 2009-33119
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 22, 2009
Berrien 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 September 22, 2009, in Benton Harbor. Claimant personally appeared and testified under oath.

The department was represented by Cathy DeRidder (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) and 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 (March 17, 2009) who was denied by SHRT (August 27, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.17 as a guide.

(2) Claimant's vocational factors are: age—47; education—8th grade; post high school education—none; work experience—assembly line worker, trim press operator, paper route helper and landfill laborer.

(3) Claimant has not performed substantial gainful activity (SGA) since 1999 when he was employed as an assembly line worker at cart factory.

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

- (a) Back dysfunction;
- (b) Nerve dysfunction;
- (c) Unable to read or write;
- (d) Balance dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (August 27, 2009)

X-rays of the lumbar spine, dated 12/2008, showed claimant had mild scoliosis and degenerative disc disease at L4-5 (page 25).

In 9/2008, claimant's creatinine and total bilirubin were within normal limits (page 22). In 2/2009, claimant's abdominal examination was normal (page 11). In 1/2009, claimant's musculoskeletal examination was normal. There was no bony tenderness. His liver was firm and enlarged, but there were no ascites (page 13). He had chronic liver disease, but had quit drinking (page 12).

In 12/2008, claimant's stream of mental activity was somewhat low, but adequately organized. There was no evidence of psychosis. His demonstrated affect was appropriate. Diagnoses included history of drug and alcohol abuse, generalized anxiety disorder, adjustment disorder with depressed mood, cognitive disorder and understanding and dependent personality disorder. The examiner indicated that claimant was capable of simple tasks with supervision. Claimant has a history of being successfully employed (new information from [REDACTED]).

ANALYSIS:

Claimant has a history of alcohol abuse with evidence of liver disease on examination, which improved when he quit drinking. His bilirubin was within normal limits. His creatinine was also within normal limits. He did have degenerative changes in his lumbar spine, but no evidence of neurological abnormalities on recent examinations. Claimant had some anxiety and cognitive limitations, but would be capable of simple, unskilled work.

* * *

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

(7) Claimant has a valid drivers' license but does not currently drive an automobile. Claimant is not computer literate.

(8) The following medical records are persuasive:

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

The licensed psychologist provided the following background:

My back is messed up, I can't read or write, and I got real bad nerves. I don't know if there is anything else. I had to

go to the doctor and ain't got my x-rays back from my liver and spine yet. They said I might have liver disease because my iron is low and my blood is low. There isn't anything else I can think of.

A long time ago when I worked at a die cast place is when my back started bothering me. It just happened over a period of time.

* * *

I've been nervous for a long time. My ma has got bad nerves too. It runs in our family. I've been nervous since I was probably in my 30's and I am 46 now. I'm just nervous about everything. It's not one particular thing.

* * *

The fully licensed psychologist provided the following DSM diagnoses: Axis I—history of drug and alcohol abuse; generalized anxiety disorder; and adjustment disorder with depressed mood.

Axis V/GAF—53.

* * *

(9) The probative medical 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 nerve dysfunction. Claimant is unable to read and write. The fully-licensed psychologist who provided consultation report provided the following diagnoses: History of drug and alcohol abuse and GAF—53. The fully-licensed psychologist did not report any functional limitations. The fully-licensed psychologist did not report any functional limitations due to claimant's mental impairments that would totally preclude the claimant from working. Also, claimant did not provide a DHS-49D or 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. The medical records establish that claimant has “back trouble” and problems with his kidney and liver. The medical records also show that claimant’s liver dysfunction improved when he quit drinking. Medical records show that claimant has some degenerative changes in his lumbar spine, but there is no evidence of a neurological abnormality but there is no evidence of a neurological abnormality. Although claimant has some anxiety and cognitive limitations, he is capable of unskilled work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. His application is still pending.

CONCLUSIONS OF LAW

CLAIMANT’S POSITION

Claimant thinks he is entitled to MA-P/SDA based on the impairments listed Paragraph #4, above.

DEPARTMENT’S POSITION

The department thinks that claimant does have evidence of anxiety and cognitive limitations but is capable of performing simple unskilled work.

The department denied MA-P/SDA benefits based on Med-Voc Rule 202.17 as a guide.

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).

The department decides eligibility based on mental impairments using the following standards.

(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).

The statement by a medical source that an individual is “disabled” or “unable to work” does not mean that disability exists for purposes of the MA-P/SDA programs. 20 CFR 416.927(e).

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 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 medical/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. Unless an impairment is expected to result in death, and must have existed, or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments that profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 criteria. However, under the *de minimus* rule, claimant meets the severity and duration requirements and 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. Claimant does not allege disability based on the Listings.

SHRT evaluated claimant's impairments using the Listings. Claimant does not meet any of the SSI Listings at this time.

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 an assembly line worker for a cart factory.

Claimant's work on the assembly line involved constant standing as well as lifting and bending.

Since claimant now has an equilibrium condition, he is unable to work on an assembly line.

Therefore, claimant meets the Step 4 requirements.

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 mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental impairment: nerve dysfunction and inability to read or write. The psychological evidence provided by the fully-licensed psychologist does not show that claimant is totally unable to perform any work activities due to

his mental impairments. The fully-licensed psychologist provided the following Axis I diagnoses—history of drug and alcohol abuse, generalized anxiety disorder, and adjustment disorder with depressed mood. The psychologist provided an Axis V/GAF score of 53.

Second, claimant alleges disability based on back dysfunction and nerve dysfunction. There is no probative medical evidence in the medical record to show that these physical impairments severely limit claimant's ability to function to the degree that he was totally unable to work.

Third, claimant testified that a major impairment to his return to work was his back pain secondary to his degenerative disc disease. 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 extensive activities of daily living (ADLs), has an active social life with his mother and sister and has a valid drivers' license.

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 theater, as a parking lot attendant, and as a greeter for [REDACTED]

Consistent with this analysis, the department correctly denied the 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: November 30, 2009

Date Mailed: November 30, 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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