

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: 2009-5956  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 19, 2009  
Gladwin 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 Gladwin on March 19, 2009. Claimant personally appeared and testified under oath.

The department was represented by Stephanie Mietz (FIM) and Valerie Boka (ES).

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 (July 29, 2008) who was denied by SHRT (December 22, 2008) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.21 as a guide.

(2) Claimant's vocational factors are: age--37; education--11<sup>th</sup> grade, post-high school education--GED, claimant studied at [REDACTED] for three semesters (political science major); work experience--self-employed pest control agent, and a owner-operator of a bar in [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004, when he operated his own pest control business.

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

- (a) Chronic low back pain;
- (b) Bilateral carpal tunnel syndrome;
- (c) Major depression;
- (d) Panic/anxiety disorder;
- (e) Sleep disorder.

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

**OBJECTIVE MEDICAL EVIDENCE (December 22, 2008)**

An MRI of the lumbar spine, dated 9/2007, showed disc bulging at L4-5 and L5-S1, and degenerative facet arthropathy of the lower lumbar spine (New Information From [REDACTED]). A neurology consult, dated 2/2008, showed claimant was close to 400 pounds. There was no atrophy, fasciculation's or automatic changes or reflex loss. Gait was normal. Romberg was negative. He moved slowly and had almost total loss of lumbar flexion and extension. Strength was intact. Sensation was intact (New Information From [REDACTED]).

In 4/2008, claimant's musculoskeletal exam was basically normal. He could not raise his legs for a straight leg raise due to the weight of his legs (page 35).

Claimant was admitted in 7/2008 due to depression, chronic pain and substance abuse. On discharge, his mental status showed thoughts were goal-directed and spontaneous without loose

associations, flight of ideas, pressured speech or thought blocking. He reported that his mood was better. Diagnoses included major depression, panic disorder with agoraphobia by history and polysubstance dependence, including marijuana, opiates, benzodiazepines, cocaine and probable substance-induced mood disorder component (New Information From [REDACTED]).

A Mental Status Exam, dated 8/2008, showed claimant's grooming was good. He made little eye contact. Thought processes were spontaneous, well-organized and pertinent. He denied delusions, obsessions and thought control. He reported having experienced auditory and visual hallucinations. His mood was described as depressed and anxious. Affect was flat. Diagnosis was major depressive disorder, with psychotic features, cannabis dependence in early full remission, opioid dependence with anxiety disorder NOS (New Information From [REDACTED]).

\* \* \*

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing (sometimes), light cleaning (sometimes), laundry and grocery shopping. Claimant uses a cane approximately five times a month. He does not use a walker or wheelchair. He uses a shower stool approximately 20 times a month. He does not wear braces. Claimant received in-patient hospital services in August 2008 for major depression and anxiety. He received in-patient hospital services in early 2009 for major depression and anxiety disorder.

(7) Claimant has a valid driver's license and drives approximately six times a month. Claimant is computer literate.

(8) The following medical/psychological records are persuasive:

(a) An [REDACTED] [REDACTED] psychological report was reviewed.

The Ph.D. psychologist provided the following summary:

This 35-year-old claimant reported being unable to work due to multiple physical health problems, depression and anxiety. Claimant meets the criteria for a diagnosis of major depressive disorder based upon the following symptoms:

decreased interest in activities, suicidal ideation, insomnia, difficulty concentrating, feelings of worthlessness, and decreased appetite. Claimant does not appear to be psychotic, and hallucinations are a likely part of the depressive episode. Claimant also reported a history of anxiety, which includes excessive worry that is difficult to control and panic attacks. Symptoms of panic include sweating, shaking, experiencing racing thoughts, having thoughts of self-harm, and crying. These episodes occur 4 to 10 times daily, and last up to 1 hour. Claimant does not meet the criteria for a specific anxiety disorder, but a diagnosis of anxiety disorder, not otherwise specified, is given to account for these symptoms.

\* \* \*

Claimant also meets the criteria for a diagnosis of marijuana and opiate dependence, based upon the following symptoms: intolerance, withdrawal, unsuccessful efforts to control substance use, spending a great deal of time using the substance, and continued use despite knowledge of having a persistent psychological problem that is likely to be exacerbated by the substance.

A Ph.D. psychologist provided the following DSM diagnoses:

AXIS I--Major Depressive Disorder, recurrent, severe with psychotic features; cannabis dependence, early full remission; opioid dependence; anxiety disorder, not otherwise specified.

AXIS V/GAF--46.

- (b) A [REDACTED] discharge summary was reviewed.

The psychiatrist provided the following mental status assessment:

Mental status today, day of discharge, obese white male in no overt distress, up and active on the unit, appropriately dressed and groomed, awake and alert, present on approach. Thoughts were goal-directed and spontaneous without loose association, flight of ideas, pressured speech or thought blocking. Denies intrusive thoughts or racing thoughts, did not appear to be responding to internal stimuli. He reports that his mood is better, he feels more relaxed. He feels a little better about everything. \* \* \*

He acknowledges some frustration knowing he is probably in trouble with the law more so than he had been in the past. He spoke of his mother and how she seemed relieved when he told her that he was giving up the substance abuse and getting into a treatment program. Judgments to situations is intact. Insight into illness is good. Motivation appears to be intact. He is oriented x3 and is a good historian.

Discharge Diagnosis:

AXIS I: (1) Major depression, recurrent, in partial remission; (2) panic disorder with agoraphobia by history; (3) polysubstance dependence including marijuana, opiates, benzodiazepines, cocaine, probable substance-induced mood disorder component.

AXIS V/GAF--60.

- (c) A [REDACTED] consultative report was reviewed.

The neurologist provided the following background: Claimant was seen today. At this time, he is a gentleman who is in his 30's. He was educated at [REDACTED] in wildlife management. He was in his own business, but then had the misfortune of falling off a roof, landing in some bushes. He hurt his back and has continued to have back pain. Now he has put on a lot of weight so that he is close to 400 pounds. He walks with really a lot of difficulty, a lot of muscle spasm. He has some disc degenerative with a mild bulging subligamentous disc at the 4-5 level. He has not lost sphincter control or had a floppy foot or a buckling knee. Apparently, he played football in college, etc., and always worked out, but now since he has had this injury, he has not been able to do hardly anything. He has been on pain medication.

We did do a systemic review including head, eyes, ears, nose, throat and endocrine, cardio-respiratory, gastrointestinal, bone and joint, neuromuscular, genitourinary, allergic, mental status and family history, and did not come up with any other new or additional symptoms or findings.

I don't find atrophy, fasciculations or autonomic changes or reflex loss. The gait is normal. The Romberg is negative. He does move slowly and he has almost total loss of lumbar flexion and extension. He is a very bright, alert gentleman.

Cranial nerves I-XII are intact. Strength is intact. Otherwise he is doing well.

\* \* \*

I think that this is going to take a two-prong approach, but #1, he is going to need stomach banding to get his weight off. He is never going to be able to do it with diet or diet medications. I think that if we get the weight off, then the disc rupture that he has probably would heal itself without operative intervention. I really think this is the approach that should be used. We have talked to him about it and he is more than willing to get started with it.

\* \* \*

(9) The probative psychological evidence does not establish an acute (non-exertional) mental condition which prevents claimant from performing all customary work functions for the required period of time. A recent [REDACTED] psychological report provides the following diagnoses: AXIS I--Major Depressive Disorder, recurrent, severe with psychotic features, cannabis dependence, early full remission, opioid dependence, anxiety disorder NOS. AXIS V/GAF--46. Claimant did not provide a DHS-49D or a 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. A February 12, 2008 office consultation by a [REDACTED] neurologist states that claimant has a small disc rupture. However, the neurologist thinks that the disc rupture probably would heal itself if claimant can lose a significant amount of weight. The neurologist recommended stomach banding to get claimant's weight off. Claimant's physician prepared a DHS-54A in which he stated that claimant is not able to return to his previous employment and is not able to do any work. Claimant read this statement into the record.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. 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 is able to perform unskilled light work based on his vocational profile [younger individual (age 37), with an 11<sup>th</sup> grade education and three semesters of college, and a history of unskilled work], based on Med-Voc Rule 202.21 as a guide. The department also considered [REDACTED] because claimant's history of drug and alcohol abuse is material to the impairments which he alleges.

The department evaluated claimant's medical evidence using the Social Security Listings. Claimant's medical records do not meet the requirements of the Social Security Listings.

In short, the department denied MA-P/SDA benefits because claimant's medical evidence of record indicates that he retains the capacity to perform a wide range of simple, unskilled light work.

**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).

To determine to what degree claimant's mental impairment limits his ability to perform SGA, 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).

**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/SDA 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 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 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 in death, or

has existed for a continuous period of at least 12 months, thereby preventing all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SA, 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, 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. The department considered claimant's impairments and decided that they do not meet the applicable SSI Listings.

Therefore, claimant does not meet the Step 3 eligibility test.

### **STEP 4**

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a self-employed pest control technician. Claimant's previous work as a pest control technician required claimant to climb ladders and to work at unprotected heights.

Since claimant is currently morbidly obese (400 pounds), he is no longer able to climb ladders and work from unprotected heights.

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 the medical evidence in the record that his combined mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental disorder (chronic depression). The most recent evidence regarding claimant's depression is found in the [REDACTED] psychological evaluation dated [REDACTED]. The Ph.D. psychologist states that claimant has a diagnosis of major depressive disorder and anxiety disorder, NOS. She also provided a diagnosis of cannabis dependence, early full remission and opioid dependence. However, the psychologist did not state, unequivocally, that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments (low back pain, carpal tunnel syndrome and sleep disorder). The most recent evaluation by a physician is dated February 12, 2008. This is an office consultation narrative report prepared by a neurologist. The neurologist reports that claimant weighs close to 400 pounds and has some disc degeneration with a mild bulging subligamentous disc at the 4-5 level. Otherwise, claimant's examination was normal and the neurologist provided the following treatment plan:

I think that this is going to take a two-prong approach, 1) he is going to need stomach banding to get his weight off. He is never going to be able to do it with diet or diet medications. I think that if we get the weight off, then the disc rupture that he has probably would heal itself without operative intervention.

The neurologist does not say, unequivocally, that claimant is totally unable to work based on his physical impairments.

During the hearing, claimant testified that a major impediment to his return to work was his chronic low back pain and carpal tunnel pain. Unfortunately, evidence of pain, along, 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 currently lives alone and performs an extensive list of activities of daily living. Claimant is also computer literate and drives an automobile approximately six times a month. 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 at 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 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 10, 2010

Date Mailed: March 10, 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/cv

cc:

