

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: 2009-5959

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 18, 2009

Oakland 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 March 18, 2009.

The department was represented by Judy Fineman (FIM), Silvestor Williams (ES) and Lindsey An (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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 condition; to the degree that claimant is now 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 a MA-P/ SDA recipient who had an eligibility review in June 2007. Claimant continues to receive MA-P benefits. The DHS manager stated at the hearing that she would restore claimant's SDA benefits since they were incorrectly terminated in April 2008.

(2) On April 2, 2008, MRT denied MA-P/SDA due to claimant's ability to perform unskilled work.

(3) On December 22, 2008, SHRT denied MA-P/SDA benefits due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.21 as a guide.

(4) On April 2, 2008, the local office notified claimant that MRT denied ongoing MA-P/SDA benefits.

(5) On July 17, 2008, claimant filed a timely hearing request. The local office deleted the pending closure of claimant's MA-P. The local office incorrectly closed claimant's SDA, but has agreed to restore those benefits.

(6) On December 22, 2008, SHRT denied claimant's request for ongoing MA-P/SDA for the following reasons:

Therefore, based on claimant's vocational profile (closely approaching advanced age at 50, 12<sup>th</sup> grade education and history of unskilled work), MA-P is denied using Vocational Rule 203.21 as a guide.

(7) Claimant's vocational factors are: age—50; education—high school diploma; post high school education—none.

(8) Claimant has not performed Substantial Gainful Activity since 2001 when he worked as a self-employed lawn care worker.

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

- (a) Chronic back pain;
- (b) Two ruptured discs;
- (c) Left leg pain secondary to circulatory dysfunction;
- (d) Status post aortal bypass (2002);
- (f) Status post admissions to acute care for drug abuse (x2).

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

**OBJECTIVE MEDICAL EVIDENCE:**

\* \* \*

ANALYSIS: Claimant had aortic insufficiency and moderate mitral regurgitation, with normal ejection fraction. There was no evidence of congestive heart failure on exam. His PFS were normal. The DHS-49 form indicated claimant had weakness, but no specific objective evidence was provided to support that statement. Claimant had decreased breath sounds. No other abnormal objective findings on the exam. Claimant's treating physician has given less than sedentary work restrictions based on claimant's physical impairments. However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence, and per 20 CFR 416.927(c) and 927(d), will not be given controlling weight. The collective objective medical evidence shows claimant is capable of performing unskilled medium work.

\* \* \*

(11) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, light cleaning, mopping, laundry and grocery shopping. He does not wear braces. He does not use a shower stool. Claimant was hospitalized once in December 2008 and once in January 2009 at an acute care facility for substance abuse.

(12) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.

(13) The following medical records are persuasive:

(a) A [REDACTED] narrative report was reviewed.

The cardiologist provided the following background:

I had the opportunity to see [claimant] in the office today for follow-up evaluation. He says he was placed back on the Simvastation. He has been more faithfully taking that. He has cut down to less than a pack of cigarettes every 2 weeks on his process of trying to get down to 0 cigarettes. He says he feels better now than he has felt in a long time. He did not get the flu over the holidays because he basically stayed in his home and did not get out.

\* \* \*

His blood pressure in our office today is 126/74. The examination is normal and do not hear a murmur.

Testing was reviewed. There is moderate aortic insufficiency and moderate mitral regurgitation, but his ejection fraction is well preserved. There is no significant dilation. His cholesterol profile is elevated, but he says he just went back of the simvastatin. His Holter monitor failed to reveal an arrhythmia. He was asymptomatic throughout.

The cardiologist provided the following assessment:

- (1) Paroxysmal supraventricular tachycardia, stable.
- (2) Mixed hyperlipidemia, back on Simvastatin;
- (3) Azibab.

(b) A [REDACTED] office progress report was reviewed. At this time, the cardiologist provided the following assessment: History of PVST; Atherosclerotic peripheral vascular disease; Hyperlipidemia.

\* \* \*

(c) An April 3, 2007 cardiac care office progress report note was reviewed.

The cardiologist provided the following assessment: Paroxysmal supraventricular tachycardia, with recurrence since the ablation; Mixed hyperlipidemia, just started on Zocor; Atherosclerotic peripheral vascular disease; Chronic pain syndrome.

\* \* \*

(14) There is no probative psychiatric evidence in the record to establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time.

(15) The probative medical evidence establishes several acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions.

- (1) Paroxysmal supraventricular tachycardia;
- (2) Mixed hyperlipidemia, just started on Zocor;
- (3) Atherosclerotic peripheral vascular disease;
- (4) Chronic pain syndrome.

The most recent medical records do not establish that claimant is able to perform any kind of substantial gainful activity; especially activity involving medium work.

(16) SHRT did not follow the SSI Improvement Protocol when evaluating claimant's ability to return to work. SHRT did not provide current relevant medical reports to establish that claimant's physical impairments have improved to the point he can work.

(17) Claimant recently applied for disability benefits from the Social Security Administration. Social Security denied application. Claimant has filed a timely appeal.

## CONCLUSIONS OF LAW

### **CLAIMANT'S POSITION**

Claimant thinks he is entitled to a continuation of his MA-P/SDA based on the impairments listed in paragraph #4, above.

In particular, claimant thinks he has a combination of severe physical impairments which prelude substantial gainful activity. Also, claimant has also recently recovered from a severe psychiatric impairment which has not been evaluated.

### **DEPARTMENT'S POSITION**

The department denied claimant's disability claim using Med-Voc Rule 203.21.

The department thinks that claimant is able to perform medium work.

The department has the burden of proof to establish that claimant's condition has improved to the point that he is now able to return to work. However, the department did not obtain current consultative medical examinations to establish claimant's current medical status.

Note: The department did not review claimant's MA-P/SDA eligibility using the applicable SSI Improvement Rules. The department cannot establish improvement without following the 7 Step process provided for under SSI improvement regulations.

### **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 has the burden of proof** to show by a preponderance of the medical evidence in the record that claimant's mental/physical 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 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 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 impairment in claimant's mental/physical impairments to a degree that he is now able to perform substantial gainful activity.

**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.

### **MENTAL IMPAIRMENTS**

Claimant testified at the hearing that he has been hospitalized on two separate occasions for an overdose. This suggests that claimant needs to be evaluated by a fully licensed psychiatrist in order to determine his current mental residual functional capacity. Given the total lack of clinical information on claimant's current medical evidence, the department has not

shown that claimant's mental impairments have improved to the point where claimant is now able to perform substantial gainful activity.

The medical evidence of record consists of an office note from a cardiologist. The report is dated January 7, 2008. In the report it refers back to other exams. The analysis presented by the department to verify denial of claimant's MA-P/SDA application focuses entirely on claimant's cardiac situation. The department has an obligation to provide a recent consultative exam by a heart specialist to establish claimant's current cardiac status. The department failed to provide this information, as required. However, the department also ignored claimant's two ruptured discs. A current clinical assessment of claimant's orthopedic and circulatory problems, has not met its burden of proof at this level. In short, the department has not shown that claimant's physical impairments have improved to the point where claimant is 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 the department has not established medical improvement in claimant's mental and physical impairments to the extent that he is now able to perform substantial gainful activity under PEM 260/261.

The department's review of claimant's MA-P/SDA ongoing eligibility requires a comprehensive review of claimant's medical/psychiatric evidence to determine claimant has sufficiently improved from the physical and mental impairments he had when he was originally approved. SHRT failed to evaluate claimant's MA-P/SDA eligibility using the SSI improvement standard as well as the standards found in PEM 260/261.

As a consequence, SHRT did not apply the correct review standard required by federal and state law (PEM 260/261). Also, SHRT did not provide a recent physical and mental exam to show that claimant's conditions have improved to the point that he is now able to work. Due to these significant omissions, SHRT committed reversible error with respect to its decision to terminate claimant's MA-P/SDA eligibility.

For these reasons, the Administrative Law Judge must reverse the decision denying claimant ongoing MA-P/SDA benefits.

Accordingly, the department's denial of claimant's application for continuation of his MA-P/SDA benefits is, hereby, REVERSED.

The department is, hereby ORDERED to continue claimant's MA-P/SDA benefits until an appropriate review, when proper clinical evidence, has been completed.

SO ORDERED.

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

Date Signed: July 23, 2009

Date Mailed: July 27, 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 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

cc:

