

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: 2009-6938  
Issue No: 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 19, 2009  
Wexford 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 19, 2009, in Cadillac, Michigan. Claimant personally appeared and testified under oath.

The department was represented by Janet Vyse (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 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for 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 SDA applicant (September 10, 2008) who was denied by SHRT (December 30, 2008) due to the department's conclusion that claimant is able to perform medium unskilled work.

(2) Claimant's vocational factors are: age—53; education—high school diploma; post high school education—none; work experience—butcher and maintenance man at a slaughter house, machine operator at a rubber company and self-employed dairy farmer for 18 years.

(3) Claimant has not performed substantial gainful activity since January 2007 when he worked as a butcher.

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

- (a) Hypertension;
- (b) COPD;
- (c) Asthma;
- (d) Reynauld's disorder/circulation dysfunction;
- (e) Gastritis;
- (f) Barrett's esophagus;
- (g) Bleeding hemorrhoids.

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

**MEDICAL EVIDENCE ( [REDACTED] ):**

Pulmonary function study of [REDACTED] reported claimant to be 71 inches tall and have an FEV1 of 2.4 (Listing level is 1.55). (Page 39.)

Physical examination of [REDACTED] reported breath sounds to be slightly diminished. Chest x-ray did not demonstrate any active process as well. His blood pressure was slightly elevated (page 34).

Colonoscopy and EGD of [REDACTED] reported finding a polyp as well as internal and external hemorrhoids in the colon. With evidence of moderate gastritis, small hiatal hernia, and evidence of a history of [REDACTED] esophagus (page 20).

**ANALYSIS:**

The combined effects of all his conditions may make heavy lifting difficult and he should avoid constant exposure to fumes. However, he should be able to perform moderate lifting.

Claimant has an extensive history of smoking and was noted to continue to smoke. Medical opinion was considered in light of CFR 416.927.

Evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

\* \* \*

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane or walker, a wheelchair or shower stool. He does not wear braces. Claimant was not hospitalized for inpatient treatment 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.

(8) The following medical records are persuasive:

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

The family physician provided the following background:

Claimant is a 42-year-old gentleman with a history of asthma, bronchitis, narcolepsy, cataplexy and stated history of colitis. He complains of chronic abdominal bloating, cramping, frequent bowel movements, sometimes with mucus and blood. He states he had a colonoscopy in the past and was placed on Asacol. Records are not available from this encounter. He states he is scheduled to see a surgeon in [REDACTED] next week for a colonoscopy. He has been taking Asacol and states it does not help.

His pulmonary status is unchanged and he remains a smoker.

\* \* \*

- (c) An [REDACTED] [REDACTED] was reviewed. The physician provided the following background:

Claimant presents to the office to follow-up with narcolepsy. He has not had any cataplexy symptoms in a long time that involves feeling weak and 'locking up.' If he does not take his stimulant medication, he feels worn out and has no ambition. He has been recently struggling with the return of his colitis and he is feeling poorly at this time. He actually comes to us after seeing [REDACTED] this morning regarding his ulcerative colitis. He will be seeing a GI specialist for another colonoscopy in the near future.

He feels overall that the current medication regimen works fairly well for him. Some days he takes no medication at all and just sleeps. That way he can give himself a drug holiday so that the medication continues to be effective.

\* \* \*

The physician provided the following impression:

- (1) Narcolepsy with cataplexy, stable;
- (2) Ulcerative colitis;
- (3) Hypertension.

\* \* \*

- (d) An [REDACTED] [REDACTED] narrative was reviewed.

The physician provided the following background:

Claimant is back in for his six month follow-up for treatment of narcolepsy with cataplexy. Thus far, he is doing well with taking up to 5 mgs of Dextro amphetamines a day.

\* \* \*

He is still experiencing REM behavior disorder on a nightly basis and has not been able to afford Klonopin at bedtime.

\* \* \*

He is anxious today. His blood pressure is elevated. He usually has no problems with elevation of blood pressure on the current regimen for narcolepsy.

We discussed the side effects and he thinks that this is due to some personal issues at home, and this is something that will pass in time because his blood pressure is usually normal at other places. He does not feel the treatment he has for the narcolepsy is causing increased 'high up.'

\* \* \*

I did ask him to try to quit smoking, get some help for this. He rolls his own cigarettes. He very rarely drinks any alcohol. I did advise him that if he should get his Klonopin again, not to drink any alcohol while taking this medication.

\* \* \*

(9) The probative psychological evidence does not establish an acute (non-exertional) medical condition which prevents claimant from performing all customary work functions for the required period of time. Claimant does not allege a mental impairment as the basis for his disability. He did not supply 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. Claimant's treating physician reports the following diagnoses: chronic

obstructive pulmonary disease, narcolepsy—cataplexy and chronic ulcerative colitis, and [REDACTED] phenomena. The treating physician did not state that claimant is totally unable to work.

(11) Claimant has recently applied for federal disability benefits for 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 SDA based on the impairments listed in Paragraph #4, above.

#### **DEPARTMENT'S POSITION**

The department thinks that claimant retains the residual functional capacity to perform a wide range of medium work. Claimant's past work in security was performed at a medium level, or less than medium. Therefore, claimant retains the capacity to perform his past relevant work.

Claimant's application for SDA was denied because claimant is able to perform medium work.

#### **LEGAL BASE**

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).

**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 SDA purposes. PEM 261. "Disability" is defined by SDA standards as 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 SDA.

SGA is defined as a performance of duties over a reasonable period of time for pay. Claimants who are working or otherwise performing substantial gainful activity are not disabled regardless of medical condition, age, education and 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 that he has an impairment which is expected to result in death or has existed for at least 12 months, and prevents all work activities. 20 CFR 416.909.

Also, to qualify for SDA, 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. Claimant does not allege disability based on the Listings.

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

**STEP #4**

Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a butcher at a slaughter house. This was medium work.

There are no medical examination reports in this record which clearly state that claimant is totally unable to perform his prior work. Claimant's residual functional capacity has not been clinically established.

Since the claimant's medical documentation does not establish that he is unable to perform medium work, he is able to return to his previous work as a butcher.

**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 SDA purposes.

First, claimant does not allege disability based on a mental disorder.

Second, claimant alleges disability based on COPD, asthma, sleep disorder, [REDACTED] syndrome, colitis, gastritis, [REDACTED] esophagus and bleeding hemorrhoids.

The medical records do not contain a DHS-49 which indicates any reduction in claimant's ability to lift, stand, walk, push or pull.

During the hearing, claimant testified that a major impediment to his return to work was his circulation disorder ( [REDACTED] phenomenon) which causes his hands and feet to be numb.

Unfortunately, evidence of pain/numbness alone, is insufficient to establish disability for SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain/numbness 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 performs an extensive list of activities of daily living and has an active social life with his adult son. 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. In this capacity, he is able to work as a ticket taker at a theater, as a parking lot attendant and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's 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 SDA disability requirements under PEM 261.

Accordingly, the department's denial of claimant's 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 20, 2009

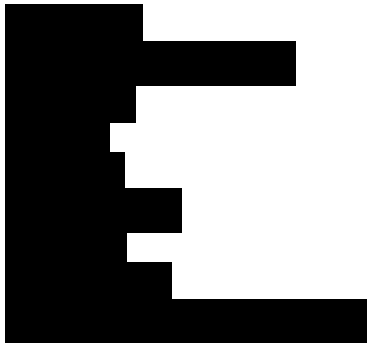
Date Mailed: March 23, 2009

**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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