

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: 2009-6961
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 2009
Jackson 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 Jackson on March 12, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Don Baibak (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) 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/retro/SDA applicant (February 29, 2008) who was denied by SHRT (January 2, 2009) due to claimant's ability to perform unskilled light work. Claimant requests retro MA-P for November and December 2007 and January 2008.

(2) Claimant's vocational factors are: age--50; education—high school diploma, post-high school education—studied drafting at [REDACTED]; work experience—carnival ride operator, junk hauler, performed odd jobs/raking leaves. At the homeless center where he is currently staying, claimant is responsible for washing, drying the bedding used by the shelter. Claimant works this job 7 days a week, several hours per day. The work is performed in return for board and room at the shelter.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he was a carnival ride operator.

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

- (a) Grand Mal seizures;
- (b) COPD/emphysema;
- (c) Statue post right knee injury;
- (d) Depression;
- (e) Insomnia

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

OBJECTIVE MEDICAL EVIDENCE (JANUARY 2, 2009)

SHRT decided that claimant is able to perform light unskilled work.

SHRT evaluated claimant's disabilities using SSI Listings 11.03, 4.04, 5.01, 3.02, 1.02, 1.04, 12.02, 12.04, 12.08 and 12.09. Claimant did not meet the requirements of any of the above Listings.

* * *

(6) Claimant lives at a homeless shelter and performs the following Activities of Daily Living (ADLs): dressing, bathing, light cleaning, laundry and grocery shopping. Claimant

is responsible for washing and drying the shelter's laundry. He performs this activity 7 days a week for approximately 2 hours per day. Claimant uses a cane on a daily basis. He does not use a walker or a wheelchair. He uses a shower stool approximately 10 times a month. He does not wear braces. Claimant received in-patient hospital care in March 2008 for high blood pressure and acid reflux disorder.

(7) Claimant does not have valid driver's license and does not drive a car. He is not computer literate. Claimant rode a bicycle to his psychological evaluation on July 10, 2008.

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

- (a) A consultative internal medicine examination was reviewed. The internist provided the following background:

Chief Complaint: Claimant is seen for alleged disability due to a seizure disorder, questionable history of COPD, right knee pain, hypertension and GERD.

- (b) History of Present Illness: Claimant is a 49-year-old who is evaluated due to the above complaints. He has had Grand Mal seizures since 1980. The last episode was one year ago. He usually passes-out unconscious with foaming around his mouth. He will bite his tongue and has diffuse jerking of his limbs. He takes medications for seizures. He has an aura off and on, but it does not usually progress to seizures. He has uncomfortable twitching and jerking of his arms and legs off and on, and on occasion has bitten the inside of his mouth without knowing that he is doing it. Since he has been on Neurontin, this has improved. He has right knee pain since 1991. There is discomfort in the knee that is worse with standing and walking. The knee cracks and with certain movements it will feel that the knee is giving out from under him. He denies any swelling. He has been told that he needs surgery on the knee. He does not report significant problems on the left side.

He has had a diagnosis of hypertension for 3 months and has been on medication. His blood pressure is under good control, but sometimes it is high. He has acid reflux disease with burning epigastric discomfort and bitter fluid in the throat. He denies nausea or vomiting.

He has been told that he has COPD. He does not have significant coughing or sputum production. He denies shortness of breath with normal activity; with heavy activity, he will have shortness of breath. He has not noted much wheezing. He has not been admitted to a hospital in the last 2 years for lung related issues, and does not remember taking antibiotics in the last one year for lung related issues. He has not been on a ventilator.

* * *

The internist provided the following assessment:

- (1) Seizure Disorder;
- (2) COPD;
- (3) Right knee pain with osteoarthritis;
- (4) Hypertension;
- (5) GERD.

* * *

- (c) A July 10, 2008 disability consult was reviewed.

The PhD psychologist provided the following background:

Claimant presents as a 5'5" 135 pound, 45 year-old male. Claimant rode his bicycle to the assessment and was on time for the appointment. Grooming, hygiene and dress are appropriate. Posture is good. Claimant walks with a significant limp on the left side. Claimant is the sole provider of data used in the assessment. English is the language used throughout the assessment. Hearing and vision do not appear to present problems for assessment. He uses glasses as an assistive device. Communication is adequate and speech takes mild effort to understand due to a cleft pallet. Claimant is not the best historian.

COMPLAINTS AND SYMPTOMS:

First allegation of disability: COPD; second allegation of disability: Hypertension; third allegation of disability: seizures; fourth allegation of disability: alcohol dependence.

* * *

ACTIVITIES OF DAILY LIVING:

Claimant reports performing ADLs independently. He engages in housekeeping, shopping, church groups, banks, gardening, yard work, laundry, cooks his meals, completes his own dressing, hygiene, bathing and grooming, watches

TV, exercises, visits friends, reads, runs errands, makes appointments and calls 911 in an emergency.

* * *

EMPLOYMENT HISTORY:

Claimant reports good relationship with work peers and supervisors. Last job: 2006 [REDACTED] (7 years). Why isn't he working? "I am at risk for seizures."

EDUCATIONAL HISTORY:

Claimant attended [REDACTED] and studied mechanical drafting.

* * *

DSM DIAGNOSIS:

Axis I—alcohol dependence (in 11 months sustained remission).

Axis V/GAF—64.

(9) The probative psychological evidence does not establish an acute (non-exertional) mental condition which is expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that he had depression. However, the psychological reports do not substantiate this. A recent psychological report provided the following diagnoses: Alcohol dependence (in 11 months sustained remission). Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity. The psychological evaluations in the record do not preclude performing unskilled sedentary work at this time.

(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 consulting internist reported the following diagnoses: Seizure disorder; COPD; right knee pain with osteoarthritis, hypertension; GERD.

(11) Claimant recently applied for federal SSI/RSDI disability benefits with the Social Security Administration. Social Security denied his application and claimant had a hearing before an Administrative Law Judge (ALJ) provided by the Social Security Administration. The ALJ denied claimant's request for SSI/RSDI benefits and claimant appealed to the Appeals Council. Claimant awaits a decision from the Appeals Council on his federal disability SSI/RSDI.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant is capable of performing unskilled light work.

The department evaluated claimant's impairments using SSI Listings 11.03, 4.01, 5.01, 5.02, 1.04, 12.02, 12.01, 12.08 and 12.09. Claimant did not qualify for disability benefits under the applicable SSI Listings.

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).

To determine to what degree a mental impairment limits claimant's ability to work, 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 Functions.**

...**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 12 months, thereby preventing all current work activities.

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 the following SSI Listings in the evaluation of claimant's impairments: 11.03, 4.01, 5.01, 3.02, 1.02, 1.04, 12.02, 12.04, 12.08 and 12.09. Claimant does not meet the requirements of 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 carnival ride operator in the summer. This was light work.

The medical evidence of record establishes that claimant has the following impairments: Seizure Disorder, COPD, right knee pain with osteoarthritis, hypertension and GERD. The physician who provided the recent medical evidence (July 17, 2008) did not state that claimant was totally unable to perform any work activities.

Therefore, claimant is able to return to his previous work as a carnival ride operator, and he does not meet 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 mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on his depression. The most recent psychological evidence; a psychiatric/psychological examination report (July 12, 2008) provides the following diagnoses: Alcohol dependence, 11 month remission and an Axis V/GAF of 64. The July 10, 2008 independent psychological evaluation provides a diagnosis of alcohol dependence and Axis V/GAF score of 64. The PhD psychologist who evaluated claimant did not state claimant is totally unable to work.

Second, claimant alleges disability based Grand Mal seizures, COPD, emphysema, status post right knee injury and insomnia. The consulting physician who reported on July 17, 2008 provides the following diagnoses: Seizure disorder, COPD, right knee pain with osteoarthritis, hypertension and GERD. The physician does not state that claimant is totally unable to work.

During the hearing, claimant testified that a major impediment to his return to work was his right knee pain, secondary to his osteoarthritis. 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 combined impairments.

Claimant currently performs many Activities of Daily Living, has an active social life with the other persons he lives with at the homeless shelter, and works in the homeless shelter's laundry in return for board and room.

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/light work (SGA). In this capacity, he is physically able to work as a ticket taker at a carnival, as a parking lot attendant, and as a greeter at [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: August 5, 2009

Date Mailed: August 6, 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:

