

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: 2009-8109
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2009
Bay 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, an in-person hearing was held on March 5, 2009 in Essexville on March 5, 2009. Claimant personally appeared and testified under oath.

The department was represented by Todd Berski (FIM).

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 (June 16, 2008) who was denied by SHRT (January 15, 2009) due to claimant's ability to perform simple unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—49; education—high school diploma; post high school education—none; work experience—produce clerk at a grocery store, warehouse clerk, sewer pipe layer and carpenter.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since July 2007 when he was a produce clerk at a grocery store.

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

- (a) Peripheral vascular disease;
- (b) Depression;
- (c) Anxiety disorder;
- (d) Blurred vision in his right eye;
- (e) Deaf in left ear and status post mini-strokes.

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

Testing in [REDACTED] reveals 100% occlusion of the left carotid and non-occlusive disease of the right carotid (page 16).

A Doppler study, dated [REDACTED], shows an AVI of 0.82 on the right and 0.91 on the left (page 17). Doppler imaging of the lower extremities, dated [REDACTED] showed AVI on the right was 8.4 and on the left was 9.9. A duplex imaging of the left lower extremity, dated [REDACTED] was negative for venous thrombosis (this is new information from DDS).

In [REDACTED], claimant was evaluated for chest pain (page 76). A cardiac stress test, dated [REDACTED], affirmed the claimant did have chest pain during the test. However, myoview SPECT was normal, and there was no ischemia, or prior infarct. The EKG was negative for adenosine induced ST segment abnormalities. The ejection fraction was within normal limits at 69 (page 61).

An exam, dated [REDACTED], indicated claimant continues to smoke, but he has cut back (page 150). Claimant was 72.5 inches tall and 119 pounds. Vision was 20/30 and 20/40 without glasses on. His blood pressure was 107/70. Breath sounds were moderately distant. The heart revealed regular rate and rhythm without enlargement. There was no clubbing, cyanosis or edema noted. Bilateral femoral pulses were decreased with absent bilateral popliteal, voialis, pedis and posterior tibial present. There were no bruits. Hip strength was intact. Dexterity was unimpaired. He had no difficulty heel and toe walking and no difficulties. Range of motion (ROM) was full and the joint step. Motor strength and tone were normal. Sensory was intact to light touch and sensory. Reflexes were intact and symmetrical. Gait is normal without use of an assistive device (page 139). The doctor indicated claimant should be encouraged to walk (page 138).

Claimant also has a history of alcohol abuse (pages 110 and 145). A Mental Status report in [REDACTED] showed claimant was depressed and anxious. His affect was appropriate and speech was normal (page 109). Diagnoses included major depressive disorder, anxiety disorder, and alcohol abuse in partial remission (page 106).

A Mental Status, dated [REDACTED] showed the claimant had five DUIs (page 145). He was dressed appropriately and did not show any abnormal movements. His speech was spontaneous and coherent. Mood was anxious and depressed. He did not show any florid psychotic symptoms. Diagnoses included major depression and alcohol dependency in remission (page 144).

ANALYSIS

Claimant's ABG does not meet Listing level of 0.50 or less. An exercise Doppler was not necessary, claimant's ADD was not between 0.50 and 0.80, as the Listing requires. On exam, on [REDACTED], peripheral pulses were decreased absent popliteal, where his pedis and tibial pulses. His feet were warm with normal color. He could heel and toe walk and gait was normal. The doctor encouraged him to walk. Claimant had a negative stress test in [REDACTED]. His vision was within normal limits, without correction. He was able to hold normal conversational speech. Claimant also has a history of alcohol abuse. His mental status showed that he was spontaneous and coherent. He was depressed and anxious, because there is no evidence of a significant mental disorder. Claimant is able to do simple unskilled light work.

* * *

(6) Claimant lives with his friend, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, and laundry.

(7) Claimant uses a cane approximately 10 times a month. He did not use a walker, wheelchair or shower stool. He does not wear braces on his back, neck, arms or legs. Claimant received inpatient hospital care in [REDACTED] for chest pain.

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

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

(a) The pertinent medical records are summarized by SHRT at Paragraph #5, above.

(10) The probative psychiatric 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. Claimant does not mention any mental impairments at the hearing. He said that the doctor told him he would lose his legs and will have heart attacks and strokes the rest of his life. Claimant did not provide a DHS-49D or DHS-49E for his mental residual functional capacity.

(11) The appropriate 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 internal medicine consult [REDACTED] reports that claimant was diagnosed with peripheral vascular disease in [REDACTED]. He does get claudication usually walking short distances. He has cut back from his smoking to two packs a day to half a pack a day and he has been smoking for 30 years. The internist provided the following

diagnoses: (1) peripheral vascular disease in the lower extremities. The consulting internist admits that claimant is totally unable to work.

(12) Claimant recently applied for federal disability benefits at 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 impairments listed in Paragraph 4 above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform simple unskilled light work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of the Social Security Listings.

Based on the claimant's vocational profile [younger individual (age 49) with a high school education and a history of unskilled work], the department denied MA-P using Med-Voc Rule 202.20 as a guide.

SDA was denied based on PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity for at least 90 days.

LEGAL BASIS

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 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. 2020 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 claimant's mental impairments limit claimant's ability to work, the following regulations must be considered:

Activities of Daily Living.

- (a) **...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).

Social Functioning.

- (b) **...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).

Concentration, Persistence or Pace.

- (c) **...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" is defined by MA-P/SDA standards as a legal term which is individually determined by consideration of all factors in this 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 and work experience. 20 CFR 416.920(b).

The Medical/Vocational evidence of record shows that claimant is not performing SGA. Therefore, claimant meets the Step 1 disability test.

STEP #2

The issue at Step 2 is whether claimant has impairments which preclude the SSI definition of severity/duration.

Claimant must establish an impairment which is expected to result in death or expected to exist for a continuous period of 12 months, thereby including all work activity. 20 CFR 416.99.

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

Since the severity/duration requirement was 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 following listings were considered: 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 as a produce worker at a grocery store. This was light work.

The medical evidence of record shows that claimant has peripheral vascular disease in both legs, more so in the right. Claimant's diagnosis of peripheral vascular disease prevents him from working in positions which require him to stand on his feet continuously for eight hours.

Since claimant is unable to return to his previous work, claimant meets the Step 4 disability test.

STEP #5

The issue at Step 5 is whether claimant has the residual functional capacity (RPC) to do other work.

Claimant has the burden of proof to show by the medical/psychiatric evidence in the record that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on depression and anxiety disorder. The psychiatric evaluation consult states the following DSM IV diagnoses: Axis I major depressive disorder; anxiety disorder; and alcohol abuse in remission. The Axis V/GAF score was 40. Claimant did not submit a DHS-49D or DHS-49E that was his mental residual functional capacity. The consultant psychiatrist did not report that claimant is totally unable to work due to his mental impairments.

Second, claimant alleges disability based on the peripheral vascular disease in both legs. This condition makes it difficult for the claimant to walk long distances and standing for long periods of time. The internal medicine consult ([REDACTED]) stated a diagnosis of peripheral vascular disease in the lower extremities. The internist noted that the bilateral hemoral pulses are decreased and the bilateral popliteal, dorsalis pedis and posterior tibial pulses are all absent. However, there is present in claimant's feet, along with normal color and there are

no bruises. The physician recommends that claimant discontinue the smoking. The internist did not report that claimant is totally unable to work.

During the hearing, claimant testified that a major impediment to his return to work was the circulatory dysfunction and pain in his legs. Unfortunately, evidence of pain, alone, proves sufficiency 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 able to work based on his depression in combination with his peripheral vascular disease. Claimant currently performs an extensive number of activities of daily living, has an active social life with his live-in partner and is computer literate. In 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 theater, as a parking lot attendant and as a greeter at [REDACTED].

Based on this analysis, the department 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 in accordance with 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 9, 2009

Date Mailed: March 10, 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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