

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: 2010-15940
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 23, 2010
Genesee 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 February 23, 2010, in Flint. Claimant personally appeared and testified under oath.

The department was represented by Linda Onufry (FIS).

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 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 (October 22, 2009) who was denied by SHRT (January 29, 2010) based on claimant's failure to provide medical evidence to establish eligibility for MA-P/SDA.

(2) Claimant's vocational factors are: age--48; education--high school diploma; post high school education--none; work experience--laborer at [REDACTED] and factory worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2000 when he was a laborer for [REDACTED].

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

- (a) Right shoulder dysfunction;
- (b) Leg tremors;
- (c) Hand tremors;
- (d) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (January 29, 2010)

SHRT decided that claimant was not eligible for MA-P/SDA due to insufficient medical evidence. SHRT evaluated claimant's impairments using SSI Listings 12.01 and 1.01. SHRT decided that claimant does not meet any of the applicable listings.

* * *

(6) Claimant lives with his parents and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, vacuuming (sometimes), laundry and grocery shopping. Claimant does not use a cane, walker, or wheelchair. He does not use a shower stool and does not wear braces. Claimant received inpatient hospital care in 2009 to obtain treatment for a self-inflicted wound.

(7) Claimant has a valid driver's license and drives an automobile approximately five times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) A November 5, 2009 psychiatric/psychological examination report (DHS-49D) was reviewed. The Ph.D. psychologist provided the following information.

Under mental status examination, the Ph.D. psychologist reports: 'Depression and anxiety are significant.'

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

Axis II--Alcohol dependence;

Axis V/GAF--50

- (b) A November 5, 2009 Mental Residual Functional Capacity Assessment (DHS-49E) was reviewed.

The Ph.D. psychologist reports that claimant is markedly limited in one skill set:

'The ability to complete a normal work day and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

In the other 19 skill sets, claimant was rated by the Ph.D. psychologist, as moderately limited or less.

- (c) An October 27, 2009 Medical Examination Report (DHS-49) was reviewed. The physician provided the following history:

Claimant has a history of severe alcohol abuse since 15 years. He was hospitalized July 2009 to dry out.

The physician provided the following current diagnoses:

His current psychiatric diagnosis is unknown by me. Dementia secondary to ETOH abuse, familial tremor in right shoulder deformity.

The physician reports that claimant can occasionally lift up to 25 pounds with his left hand but is unable to do any lifting with his right hand. Claimant is able to stand/walk

about six hours in an eight-hour day. Claimant is able to use both hands for simple grasping. He is able to use his left hand for reaching and pushing-pulling. Claimant has normal use of his feet/legs.

- (d) On October 27, 2009 Medical Needs form (DHS-54A) was reviewed.

The physician provided the following diagnoses: Familial tremor, dementia, secondary to ETOH abuse, depression and right shoulder deformity. Claimant does not have a medical need for assistance with his activities of daily living.

The physician reports that claimant is unable to work at his usual occupation and is unable to work at any job.

The physician does not cite any clinical evidence to support her statement that claimant is totally unable to work.

- (9) Claimant alleges disability based on a mental impairment: Depression. The psychological report (November 5, 2009) states that claimant has significant depression and anxiety. However, the psychologist diagnoses is alcohol dependence with a GAF score of 50 (moderate). The Ph.D. psychologist does not state that claimant is totally unable to work on the DHS-49D or DHS-49E.

- (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 claimant testified that he has right shoulder dysfunction in combination with leg tremors and hand tremors. Claimant's tremors were confirmed by the physician who states that claimant has dementia secondary to alcohol abuse and familial tremors and right shoulder deformity. The physician reports that claimant's ability to lift is severely limited. Claimant is able to stand and/or walk about six hours in an eight-hour day and has normal use of his legs. The physician's report which states claimant is totally unable to work

will not be given controlling weight because it is contrary to the great weight of the medical evidence in the record as a whole.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security recently denied his application. Claimant filed a timely appeal.

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's medical records do not establish a severe impairment for purposes of MA-P/SDA eligibility.

The department evaluated claimant's impairments using SSI Listings 12.01 and 1.01. The department decided that claimant does not meet any of 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 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).

To determine to what degree claimant's alleged mental impairments limit his 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 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).

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 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 earning substantial income, he is not disabled for MA-P/SDA purposes.

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, has existed for 12 months and totally prevents all current work activities. 20 CFR 416.909.

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

Using the *de minimus* standard, claimant meets the Step 2 disability test.

STEP #3

The issue at Step 3 is whether the 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

The issue at Step 4 is whether claimant is able to do his previous work. Claimant was last employed as a laborer for a [REDACTED]. This work was medium work and requires that claimant have the ability to use both shoulders to dig trenches and lay cable.

The medical evidence of record establishes that claimant has a severe right shoulder dysfunction. Claimant's shoulder dysfunction precludes him from performing the hard physical labor required of his previous job.

Since claimant is no longer able to perform the heavy labor required of his last job, he is unable to return to his job with the [REDACTED]. 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 combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on depression. The Ph.D. psychological reports in the record show that claimant has a diagnosis of alcohol dependence and Axis I/GAF score of 50. The Ph.D. psychologist did not report that claimant is totally unable to work based on his mental impairments. The Ph.D. psychologist did provide a DHS-49D and a DHS-49E. However, the Ph.D. psychologist did not state on either document that claimant was totally unable to work.

Second, claimant alleges disability based on a right shoulder impairment. The physician who examined claimant reported that claimant was unable to perform heavy lifting with his right shoulder. The physician also reported that claimant was totally unable to work at any job. However, this medical source opinion (MSO) will not be given controlling weight because it is contrary to the great weight of the medical evidence in the record as a whole. See 20 CFR 416.927(c) and (e).

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combined impairments. Claimant performs an extensive number of activities of daily living, has an active social life with his parents and drives an automobile approximately five 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 for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-/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: June 7, 2010

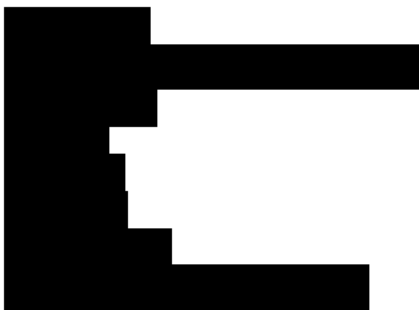
Date Mailed: June 8, 2010

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 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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