

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: 2010-17585  
Issue No: 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 16, 2010  
Marquette 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 16, 2010, in Marquette. Claimant personally appeared and testified under oath.

The department was represented by Rob Mattia (AP Supervisor) and Pamela Ehins (ES).

By agreement of the parties, the record closed March 16, 2010.

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 18, 2009) who was denied by SHRT (February 22, 2010) due to claimant's ability to perform his past work as a maintenance worker. The department considered Listings 11.02 and 12.01.

(2) Claimant's vocational factors are: age--48; education--9th grade; post high school education--GED while in prison; work experience--maintenance worker for [REDACTED] and landscape worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a landscape worker in 2009.

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

- (a) Epilepsy; and
- (b) Chronic seizures.

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

**OBJECTIVE MEDICAL EVIDENCE (February 22, 2010)**

SHRT decided that claimant was able to perform his previous work as a maintenance worker. SHRT evaluated claimant's eligibility using SSI Listings 11.02 and 12.01. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on claimant's ability to perform his past work.

(6) Claimant 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, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant was hospitalized overnight as an in-patient in September 2009 to obtain treatment for his epilepsy.

(7) Claimant does not have a valid driver's license and does not drive because of his epilepsy. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] psychological assessment was evaluated.

The Ph.D. psychologist provided the following information:

**REASON FOR REFERRAL:**

Claimant was hospitalized from [REDACTED] to [REDACTED] with suspected overdose and diagnosis of seizure disorder and depression at [REDACTED].

\* \* \*

**HISTORY:**

\* \* \*

Claimant reports that he was a poor student and that he dropped out of school in the 6th grade due to a combination of behavioral problems and academic deficiency. He went to work in the woods. He earned his GED in 2006 while serving time in prison.

\* \* \*

**ALCOHOL AND OTHER DRUGS HISTORY:**

Claimant reports a history of alcohol abuse and dependence. He has had two driving-under-the-influence charges on his record prior to 1995 and received inpatient substance abuse treatment on two different occasions at [REDACTED]. Claimant indicates he continues to smoke marijuana because it helps compensation for the way the Tegretol medication makes him feel as prescribed for his seizure disorder.

**VOCATIONAL HISTORY:**

Claimant indicates he worked as a truck driver, over-the-road long distance and local until the onset of his seizures in October, 2007.

\* \* \*

**CLINICAL IMPRESSIONS:**

Claimant is oriented x3. Thought process is logical and coherent. Recent and remote memory are both poor. His memory for past events is narrow and fixated. **He has a significant history of substance abuse, and his condition is not in remission.** Although he reports that he does not drink, hospital records would indicate otherwise. He admits to being depressed due to his financial situation and his medical condition. He denies any suicidal ideation. He indicates that the hospitalization in September 2009 was a result of taking his medication at a level that he thought the prescription called for. This would appear to be further denial and rationalization. Claimant has an antisocial history that stretches back to grade school, a history of substance abuse, a history of noncompliance. His seizure disorder began, he reports, in October 2007 while driving a potato harvester. He denies any use of drugs or alcohol at the time. Since then he is no longer able pursue sustainable employment. He is currently living in a trailer without running water or toilet facilities. He expects that the electricity will be shut off shortly. He is keeping warm from a wood stove. Given the way he presents, this is likely to be a somewhat unsafe situation as well as hazardous to his health.

**DIAGNOSIS:**

Axis I--Major depression, recurrent; alcohol dependence, not in remission.

Axis V--GAF--35. Severe impairment in social, emotional and occupational functioning.

**TREATMENT RECOMMENDATIONS:**

Claimant appears to be suffering from depression, alcohol dependence, and suicidal thinking that he is not willing to admit to. He blames everything on his financial condition. He denies any problems with his marriage even though he and his wife live separately. He denies any continued use of alcohol; does admit to marijuana usage but only as a remedy or counterpoint to medication reactions. Claimant is clearly not able to work, nor is he likely to be able to in

the future. His condition should be considered chronic and debilitating.

\* \* \*

- (b) An October 13, 2009 Medical Examination Report (DHS-49).

Claimant's family physician provides a current diagnosis of seizure disorder, alcohol dependency--in remission and depression. The family physician indicates that claimant is able to frequently lift up to 50 pounds or more but does not state any standing or sitting limitations. He is able to do simple grasping, reaching, pushing-pulling; but not fine manipulating. He is unable to operate foot controls. Claimant has slow responses physically.

The family physician indicates that claimant has the following mental limitations: Comprehension, memory, sustained concentration, following simple directions, reading/writing, and social interaction.

The family physician provided the following findings:

The patient is limited by his frequent seizures. He also has depression. He is unable to drive or participate in any job where a seizure could cause a dangerous situation.

\* \* \*

The family physician did not state that claimant was totally unable to work.

- (c) A [REDACTED] (DHS-49) was reviewed. The physician provided a current diagnosis: Epilepsy. The physician stated that claimant had no physical limitations. The physician stated that claimant had no mental limitations except some difficulty following directions. The physician provided the following notes:

Claimant is mentally slow to comprehend.

- (d) A [REDACTED] summary was reviewed. Claimant's discharge diagnosis provided the following information:

**DIAGNOSIS:** Carbamazepine toxicity.

**CONCURRENT DIAGNOSIS:** Depression treated with Prozac (40 mgs by mouth daily).

**HISTORY OF PRESENTATION:**

This is a 47-year-old male patient of [REDACTED] who was recently hospitalized about a week ago with intentional Phenobarbital overdose, who presented on September 21, 2009 with an unintentional Tegretol overdose. The patient noted that on the evening of September 21, 2009, he was unable to walk and had difficulty controlling his movements. He did not have any pain. He denied any alcohol use at the time of the event. The [REDACTED] [REDACTED] internist did not report that claimant is totally unable to work.

- (e) A [REDACTED] history and physical was reviewed.

**HISTORY OF PRESENT ILLNESS:**

Claimant is a very pleasant 47-year-old white male with a history of seizure disorder since 10/02/2007. The claimant states that he normally has one to two seizures a week ever since that time. The only medication that he has tried for management of his seizures was Tegretol and Phenobarbital; however, the seizures continue.

\* \* \*

Claimant presented today for ataxia (unsteadiness in standing and walking from a disorder of the control mechanism in the brain), which he has been having for many years, secondary to his Tegretol. He states that approximately 3-4 hours after he takes his Tegretol that he returns to his baseline and does not feel unsteady.

\* \* \*

**HABITS:**

The patient does smoke a pack a day for the past 20 years. He denies any chronic alcohol use and states that he smokes marijuana as often as he can get it.

**ASSESSMENT AND PLAN:**

- (1) Tegretol overdose, unintentional;

(2) Depression, stable--continue Prozac 40 mgs q.h.s.

(f) A [REDACTED] discharge summary was reviewed:

**ADMISSION DIAGNOSIS:** Drug overdose, intentional.

**DISCHARGE DIAGNOSIS:** Drug overdose, intentional.

**CONCURRENT DIAGNOSIS:**

- (1) Seizure disorders.
- (2) Depression.

**BRIEF HISTORY OF PRESENTATION:**

Claimant is a 47-year-old male who was sent to the emergency department after falling. The patient had previously taken approximately 14 tablets of Phenobarbitol, which he is prescribed for a seizure disorder, as well as drinking alcohol. Claimant was brought to the emergency department.

\* \* \*

On the day of discharge, the claimant was re-evaluated for this depression and suicidal ideation by [REDACTED] and medications for seizure disorder were reviewed. The claimant's labs for carbamazepine came back below normal levels and the patient was restarted on it in the hospital.

\* \* \*

**CONSULTATIONS:**

Pathways was consulted and after evaluation it was determined that the claimant would not need a psychiatric admission as the patient is not requesting psychiatric admission at this time and denies current suicidal ideation, plan, or intent.

\* \* \*

The [REDACTED] internist did not report that claimant is totally unable to work.

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required

period of time. The clinical evidence provided by the Ph.D. psychologist (January 6, 2010) is an Axis I diagnosis: Major depression, recurrent; and alcohol dependence not in remission.

The Axis V/GAF diagnosis is 35. Severe impairment in social, emotional and occupational functioning. However, the Ph.D. psychologist diagnosis is rebutted by the October 13, 2009 Medical Examination Report completed by claimant's family physician. The family physician provides the following diagnoses: Seizure disorder, depression and alcohol dependency in remission. The family physician states that claimant is able to lift up to 50 pounds frequently, has no limitations on his ability to sit or stand. Also, he is able to use his hands/arms for simple grasping, reaching, pushing-pulling but not fine manipulation. Claimant is also unable to operate foot/leg controls.

The family physician provided the following notation: Claimant is limited by his frequent seizures. He also has depression. Claimant is unable to drive or participate in any job where a seizure could cause a dangerous situation.

The family physician does not state, categorically, that claimant is totally unable to work.

(10) The probative medical evidence, standing alone, does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has a chronic seizure disorder and that it is not well-regulated with claimant's current medications. However, none of the physicians who evaluated claimant have stated, categorically, that claimant is totally unable to work. To the contrary, when claimant's medications are properly monitored, claimant has good control over his seizures.

(11) Claimant thinks he is eligible for SDA based on his chronic seizure disorder.



(12) Claimant recently applied for federal disability benefits with the Social Security Administration (SSA). His application is currently pending.

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

Claimant thinks he is entitled to SDA benefits based on his chronic seizure disorder.

**DEPARTMENT'S POSITION**

The department thinks that claimant has the residual functional capacity to perform his past work as a maintenance worker.

**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).

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.

(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 and 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 combined impairments meet the department's definition of disability for SDA purposes. PEM/BEM 261. "Disability," as defined by 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 eligible for SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. PEM/BEM 261.

Claimants, who are working and performing Substantial Gainful Activity (SGA), are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The Medical/Vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 eligibility test.

**STEP #2**

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Unless an impairment is expected to result in death, it must have existed, or be expected to exist, for a continuous period of at least 90 days from the date of application.

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

If claimant does not have an impairment or combination of impairments which profoundly limit his physical or mental ability to do basic work activities, he does not meet the Step 2 criteria. PEM/BEM 261. SHRT found that claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets the Step 2 eligibility 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 a Listing.

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 maintenance man for [REDACTED] and as a landscape/lawn maintenance worker. Claimant's previous work was medium work.

The medical/vocational evidence of record shows that claimant has a severely reduced ability to stand and walk due to chronic seizures. Based on the medical evidence of record, claimant is not able to return to his previous work as a lawn care maintenance worker.

Claimant meets the Step 4 eligibility test.

**STEP #5**

The issue at Step 5 is whether claimant has the residual functional capacity (RFC) to do other work. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Claimant is unable to perform skilled work because of his memory dysfunction and a reduced ability to concentrate. This is primarily related to the medication which claimant needs in order to control his seizure disorder. Notwithstanding claimant's mental limitations, claimant is able to do simple unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED].

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his chronic epileptic condition. Claimant currently performs many activities of daily living and has an active social life. Claimant is able to perform an extensive list of activities of daily living. Also, he is able to walk approximately one mile. In general, the claimant is able to take care of his activities of daily living although he is limited by the fact that he lives in a trailer without running water.

Based on this analysis, the department correctly denied claimant's SDA application.

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 BAM/BEM 261. Claimant is not disabled for SDA purposes based on Step 5 of the sequential analysis, as described above.

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: August 23, 2010

Date Mailed: August 23, 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

cc:

