

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]  
[REDACTED]  
[REDACTED]

Reg. No: 2010-40030

Issue No: 2009; 4031

Case No: [REDACTED]

Hearing Date:

July 29, 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 July 29, 2010, in Flint (Pierson Road). The claimant personally appeared and testified under oath.

The department was represented by Donna Romanetto (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to SHRT on August 2, 2010. Claimant waived the timeliness requirement, so his new medical evidence would be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued a decision below.

**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) In February 2010, the local office opened claimant's MA-P and SDA cases in error.
- (2) Claimant is an MA-P/SDA applicant (November 20, 2009) who was denied by SHRT (July 6 and August 4, 2010) due to claimant's ability to perform medium unskilled work. SHRT relied on Med-Voc Rule 203.28 as a guide.
- (3) Claimant's vocational factors are: age--42; education—high school diploma; post high school education—attended [REDACTED]; work experience—cement finisher.
- (4) Claimant has not performed Substantial Gainful Activity (SGA) since 2000 when he worked as cement finisher.
- (5) Claimant has the following unable-to-work complaints:
  - (a) Back dysfunction;
  - (b) Shoulder dysfunction;
  - (c) Left ankle dysfunction;
  - (d) Bilateral foot dysfunction; and
  - (e) Depression.
- (6) SHRT evaluated claimant's medical evidence as follows:

**OBJECTIVE MEDICAL EVIDENCE (8/04/2010)**

**MEDICAL SUMMARY:**

See FIA-282, dated 7/06/2010 for the prior medical summary.

**NEW INFORMATION:**

In 6/2010, claimant had left shoulder and left elbow pain. He had decreased range of motion of the left shoulder.

**ANALYSIS:**

Claimant's examination in 1/2010 was within normal limits, except for decreased bilateral grip strength and minor muscle wasting of the hands. In 6/2010, he had decreased range of motion of the left shoulder and elbow. Claimant could occasionally lift 20 pounds. He had no mental limitations.

**OBJECTIVE MEDICAL EVIDENCE (July 6, 2010)**

**MEDICAL SUMMARY:**

In 1/2010, claimant's diagnosis included osteoarthritis, bilateral carpal tunnel, depression and asthma. He was 5'9" tall and weighed 146.5 pounds (page 17). He had decreased bilateral grip strength, with some minor muscle wasting of the hands. There were no neurological abnormalities noted and his mental status was within normal limits. The doctor indicated he could occasionally lift 20 pounds. He did not medically require any assistive device for ambulation. (Page 18.) There were no mental limitations.

**ANALYSIS:**

Claimant's examination was within normal limits except for decreased bilateral grip strength and minor muscle wasting of the hands. He could occasionally lift 20 pounds. He had no mental limitations.

\* \* \*

- (7) Claimant lives with his aunt and performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing (sometimes), cooking (sometimes), laundry (sometimes) and grocery shopping. Claimant uses a cane five times a month. He does not use a walker or a wheelchair. He uses a shower stool approximately ten times a month. Claimant does wear braces on his legs. Claimant was not hospitalized an in-patient in 2009. In 2010, he was hospitalized at Hurley Hospital for an infection and diarrhea.
- (8) Claimant does not have a valid driver's license. Claimant has three minor children who live nearby in [REDACTED]. He sees them on a regular basis.

(9) The following medical records are persuasive:

- (a) A February 10, 2010 Medical Examination Report (DHS-49) was reviewed.

The family doctor provided the following diagnoses:

- (1) Osteoarthritis;
- (2) Bilateral carpal tunnel syndrome;
- (3) Depression; and
- (4) Asthma.

The family physician states that claimant may lift up to 10 pounds frequently and up to 20 pounds occasionally. Claimant is able to stand/walk at least two hours in an eight-hour day. He is able to sit about six hours in an eight-hour day. Claimant is not able to use his hands/arms for repetitive action. He is able to use his feet to operate foot controls. Claimant has no mental limitations.

- (b) A February 10, 2010 Medical Needs form (DHS-49A) was completed by the family doctor.

The family doctor states the following diagnoses:

- (1) Osteoarthritis;
- (2) Bilateral carpal tunnel;
- (3) Depression; and
- (4) Asthma.

The family physician states that claimant does not need medical assistance for personal care activities. He further states that claimant will be unable to perform his usual occupation for one year and also reports that claimant can work at any job, with limitations.

The physician explains that claimant has limited use of his hands secondary to arthritis and carpal tunnel due to repetitive lifting required at a prior job.

**NOTE:** The family physician did not state that claimant is totally unable to work.

- (10) Claimant alleges a severe mental impairment based on depression. However, there are no probative psychiatric reports in the record. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.
- (11) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do establish that claimant has diminished use of both hands. This would prevent him from doing repetitive grasping, reaching-pulling, and fine manipulating. However, none of the physicians who evaluated claimant reported that he was totally unable to work. Although claimant is not able to do continuous, repetitive activities with either hand, there is no probative medical evidence to establish a severe disabling physical condition that totally precludes all sedentary work activities.
- (12) Claimant has not applied for federal disability benefits (RSDI/SSI) with the Social Security Administration.
- (13) Due to local office error, claimant is currently receiving MA-P/SDA benefits even though the local and State Hearing Review Team have decided that he does not meet MA-P/SDA disability standards.

### **CONCLUSIONS OF LAW**

#### **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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

The department decides eligibility issues arising out of mental impairments using the following standards:

**(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).

**(d) Sufficient Evidence:**

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

**(e) Chronic Mental Impairments:**

**...Chronic Mental Impairments:** Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

**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. BEM 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 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 Step 1.

**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/or 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 Step 2.

**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.

However, SHRT evaluated claimant's eligibility using the applicable SSI Listings. SHRT decided that claimant does not meet any of the SSI Listings.

Therefore, claimant does not meet Step 3.

**STEP #4**

The issue at Step 4 is whether claimant is able to do his previous work. Claimant was last employed as a cement finisher. This was medium work and required constant standing bending.

Because of claimant's bilateral grip strength issues, combined with minor muscle wasting issues, claimant is unable to return to his previous work as a cement finisher.

Therefore, claimant meets Step 4.

**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/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 a mental impairment: depression.

Unfortunately, claimant has not submitted any clinical documentation of his depression. As previously noted, claimant did not submit any psychiatric reports. Furthermore, he did not submit a DHS-49D or DHS-49E to establish his mental residual functional capacity. Claimant has not established a severe mental impairment due to his failure to provide persuasive clinical documentation.

Second, claimant alleges disability based on bilateral hand dysfunction. The family doctor submitted a DHS-49B (Medical Needs form) which states that claimant has limited use of his hands secondary to arthritis and carpal tunnel. This prevents claimant from doing heavy lifting on a repetitive basis which was required in his prior vocation of cement finisher. However, none of the physicians who provided reports on claimant's physical condition stated that he was totally unable to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combined impairments. Currently, claimant performs many activities of daily living, and visits his children regularly.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform 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].

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Also, it is significant that there is no "off work" order from claimant's primary care physician in the record.

The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it denied claimant's MA-P/SDA application. Furthermore, claimant did not meet his burden of proof to show the department's denial of his application was reversible error.

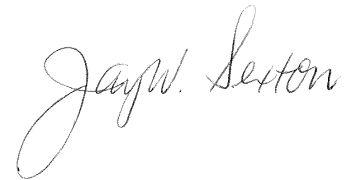
Accordingly, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis as presented above.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, states that claimant does not meet the MA-P/SDA disability requirements under BEM 260/261.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby, AFFIRMED.

SO ORDERED.



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Jay W. Sexton  
Administrative Law Judge  
For Maura D. Corrigan, Director  
Department of Human Services

Date Signed: August 16, 2011

Date Mailed: August 16, 2011

**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:

