

S/TATE 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: 2010-46242  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 8, 2010  
Kalamazoo 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 September 8, 2010, in Kalamazoo. The claimant personally appeared and testified under oath.

The department was represented by Sue Prior (ES) and Jason Morris (ES).

The record closed on September 8, 2010.

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 (April 16, 2010) who was denied by SHRT (August 13, 2010) due to claimant's ability to perform unskilled sedentary work. SHRT relied on Med-Voc Rule 201.27 as a guide.

(2) Claimant's vocational factors are: age--38; education--11th; post high school education--GED; work experience--lawn mower operator, nursery laborer and assembly line worker.

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

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

- (a) Degenerative disc disease;
- (b) Nerve dysfunction;
- (c) Reduced ability to stand and walk;
- (d) Chronic low back pain;
- (e) Anxiety;
- (f) Depression.

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

**OBJECTIVE MEDICAL EVIDENCE (August 13, 2010)**

In 2/2010, claimant was 5' 10" and 225 pounds. The right calf was smaller than the left calf; the right calf was 39 cm. and the left calf was 40-1/2 cm. in circumference. The thighs were equal in circumference. He had atrophy of the right calf but manual muscle testing was normal. There was no muscle spasm. Grip strength was 5/5. He had diminished sensation in the L4 and L5 dermatomes of the right calf and in the posterior right calf in the S1-2 dermatomes. Straight leg raise was negative, bilaterally, in the seated position. Deep tendon reflexes showed the right L4 reflex was increased compared to the others and the right S1 reflex

was absent (page 4). Range of motion was normal to all areas. His gait revealed mild limping on the right leg stance (page 5).

A psychiatric evaluation dated 2/2010 showed the claimant maintained good eye contact. His affect was bright. He maintained a spontaneous stream of mental activity throughout the interview. His pressure of speech was within normal limits. His responses were generally well-organized (page 9). He denied psychotic symptoms (page 10). Diagnoses included dysthymic disorder and adjustment disorder (page 11).

**ANALYSIS:**

Claimant had some weakness of the right knee and some atrophy. He reported sensory abnormalities in the right leg. He also reported a diagnosis of dysthymic disorder and adjustment disorder but his mental status was generally unremarkable.

\* \* \*

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, and light cleaning. Claimant does not use a cane, walker, or a wheelchair. He uses a shower stool 30 times a month. Claimant does not wear braces. He was not hospitalized in 2009 or 2010.

(7) Claimant has a valid driver's license and drives an automobile approximately three to four times during a six-month period. Claimant is computer literate and has his own personal computer.

(8) The following medical records are persuasive:

(a) A [REDACTED] psychiatric/psychological medical report was reviewed.

Complaints and symptoms:

\* \* \*

I've got something wrong with my spine. I started experiencing that my right leg would start dragging. I woke up one night with what felt like a branding iron stabbing into my quadriceps. Since then that area has been numb to the touch. Mostly at night is when I get that stabbing feeling...' He reported that he has difficulties driving due to the pain and numbness in his leg.

Regarding his mental health problems, claimant stated, 'I've had anxiety and depression. I've grown up with it, but I've been able to manage with the help of medications and just you know, working through the anxiety, understanding it...

\* \* \*

**WORK HISTORY:**

Regarding his work history, claimant reported that he last worked doing landscaping. He reported that he has worked in landscaping throughout his lifetime. He reported that he has always done physical labor throughout his work life. He reported that he has no other skills and this contributes to his feeling that he wasted his life.

\* \* \*

**ACTIVITIES OF DAILY LIVING:**

Regarding household chores, he stated, 'I don't mind doing any of those but she gets offended if I do that. She's old fashioned or something... I understand the laundry because I'll screw that up, but I don't mind doing the dishes. Once in a while, I'll get to vacuum the floors. There is a lot of maintenance that I'll do. I just recently replaced the hot water heater. I take the garbage out. I make sure, it gets out to the curb... When I was working, that was her job...' Claimant reported being independent in managing the household chores.

\* \* \*

DSM Diagnoses:

Axis I--Dysthymic Disorder; Adjustment Disorder

Axis III--Chronic Lumbar Pain; Hyperlipidemia and Asthma.

Axis V/GAF--50.

**PROGNOSIS:**

Claimant's symptoms appear to interfere with his ability to work effectively with other people. However, he appears to have good concentration and attention. He may have difficulties with procrastination and may have poor work habits. However, he appears to have the ability to perform simple and repetitive tasks.

\* \* \*

- (b) A February 11, 2010 consulting neurologist's report was reviewed.

**CHIEF COMPLAINT:**

Degenerative disc disease, I can't sleep at night due to pain, asthma, depression.

**HISTORY:**

Claimant complains of numbness and weakness of his right quadriceps muscle. His right leg gives out on him when he is flexing it. These symptoms of numbness and weakness occurred after he woke up in September 2009 with intense pain in the right quadriceps. In the remote past in 1999, he had arthroscopic surgery on the LEFT knee. There is a history of spondylolisthesis of L5-S1 that is reported as a grade 1/5. The claimant also complains of tingling in the right posterior leg in the S1-2 dermatomes. The claimant noted that the right calf has been smaller for years, but this has never been assessed. He is not aware of any specific trauma causing this problem.

\* \* \*

**PSYCHOSOCIAL:**

Walks steps, literate, ADL independent, last job landscaping, but it stopped in November 2009 due to it being a seasonal job.

\* \* \*

**CONCLUSION:**

Claimant has weakness of the right knee that continues to his sense that he is going to fall. There appears to be more than one problem at the right leg. Atrophy is noted in the anterior and posterior calf compartments, but there are also deep tendon reflex asymmetries suggesting either an L4 or S1 radiculopathy.

\* \* \*

**NOTE:** The neurologist did not state that claimant was totally unable to work due to his physical impairments.

(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 consulting psychiatric/psychological report provides the following diagnoses: Dysthymic Disorder and adjustment disorder. The Axis V/GAF score is 50. The Ph.D. psychologist notes that claimant's symptoms appear to interfere with his ability to work effectively with other people. However, he appears to have good concentration and attention. He may have difficulties with procrastination and poor work habits. However, he appears to have the ability to perform simple and repetitive tasks.

(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 consulting neurologist states that claimant has right leg dysfunction and atrophy is noted in the right leg. The neurologist provided a diagnosis of L4 or S1 radiculopathy.

The neurologist also noted sensory abnormalities in both nerve distributions with numbness in the end. Anterior right leg and tingling in the right posterior leg. The neurologist reports that claimant's complaints of pain and weakness with exercising the right leg are valid. The neurologist did not state that claimant was totally unable to do any work.

(11) Claimant thinks he is eligible for MA-P/SDA because of his right leg dysfunction and his chronic back pain.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration (SSA). SSA denied his claim. Claimant filed a timely appeal.

### CONCLUSIONS OF LAW

#### **CLAIMANT'S POSITION**

Claimant thinks he is eligible for MA-P/SDA based on his degenerative disc disease, nerve issues and his inability to stand and walk for long periods. Claimant also reports chronic low back pain.

#### **DEPARTMENT'S POSITION**

The department thinks that claimant has the residual functional capacity to perform unskilled sedentary work. The department thinks that claimant's impairments do not meet/equal the intent or severity of the Social Security Listing. Based on claimant's vocational profile (younger individual, 12th grade education and history of unskilled work) MA-P was denied using Med-Voc Rule 201.27. SDA was denied because the nature and severity of claimant's impairments do not preclude all work activity at the sedentary level for 90 days.

### **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).

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).

**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/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. PEM/BEM 260/261.

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 Step 1.

### **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 12 months from the date of application. 20 CFR 416.909. The durational requirement for SDA is 90 days. PEM/BEM 261.

Also, to qualify for MA-P/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. 20 CFR 416.920(c). SHRT decided that claimant meets the duration requirements using the *de minimus* test.

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 a Listing.

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 has worked mainly in manual labor jobs. His most recent work was operating a lawnmower. This was light work.

The Medical/Vocational evidence of record shows that claimant has right leg dysfunction. This establishes that claimant is not able to stand and walk continuously for an eight-hour shift. Based on the medical evidence of record, claimant is not able to return to his previous work as a lawnmower operator due to his restrictions on standing and sitting.

Claimant meets Step 4.

**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]. [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. Notwithstanding claimant's mental limitations (poor planning and procrastination), claimant is able to perform unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to his return to work was his chronic back pain and right leg numbness. 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 credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work. Although claimant's pain medications do not totally eliminate his pain, they do provide some relief.

It should be remembered that even though claimant has significant physical impairments, he does have notable residual work capacities. Claimant's grip strength was 5/5. Straight leg raise was negative bilaterally in a seated position. Deep tendon reflexes showed the right L4 reflex was increased compared to others and the right S1 reflex was absent. Range of motion was normal to all areas. His gait revealed mild limping on the right leg stance.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his back pain secondary to his back and right leg dysfunction. Claimant told the consulting psychologist that he performs many activities of daily living and recently installed a hot water heater. Also, claimant is computer literate and has his own computer at home.

Based on this analysis, the department correctly denied claimant's MA-P/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 MA-P/SDA disability requirements under PEM/BEM 260/261. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis, as described above.

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: September 23, 2010

Date Mailed: September 24, 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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