

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-6130
Issue No: 2009; 4031
Case No: [REDACTED]

Hearing Date:
January 5, 2010
Muskegon 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 January 5, 2010, in Muskegon. The claimant personally appeared and testified under oath. The claimant was represented by [REDACTED], Attorney at Law [REDACTED].

The department was represented by Sue Faltinek (FIM).

The Administrative Law Judge appeared by telephone from his office in Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on February 17, 2010. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's third disability denial, the Administrative Law Judge issued the 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) Claimant is an MA-P/SDA applicant (March 31, 2009) who was denied by SHRT (November 13, 2009, February 1 and February 23, 2010) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.13 as a guide.
- (2) Claimant's vocational factors are: age--52; education—high school diploma; post high school education—none; work experience—worked as a drywall contractor for 31 years.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he worked as a drywall contractor.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Status post brain aneurysm (2004);
 - (b) Status post stroke (2009);
 - (c) Depression; and
 - (d) Takes many prescription medications.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (February 23, 2010)

MEDICAL SUMMARY:

See DHS-282—new dated 11/13/2009 and 2/01/2010 for the prior SHRT decisions.

NEW INFORMATION: In 1/2010 the claimant had mild expressive aphasia. He responded to questions appropriately but did sometimes have difficulty recalling words. He could answer simple questions (Exhibit B1, page 159). Deep tendon reflexes were equal bilaterally. Grip was 5/5 bilaterally. Minimal problems were seen with fine motor activity. He could write with a pen but as he wrote the writing did become less clear. Claimant had good gait, including the ability to walk on heels and toes (Exhibit B1, page 160).

A psychological evaluation dated 1/2010, showed no gait problems noted. He complained of being very anxious, but

there were no motor coordination problems observed. He was nonspontaneous. His speech was clear and coherent but he did present with expressive aphasia. His thought processes were relevant, logical and connected. He denied psychotic symptoms (Exhibit B1, page 163). His affect was appropriate to the situation. Diagnoses included cognitive disorder and depressive disorder (Exhibit B1, page 164).

ANALYSIS:

The claimant had coiling of a brain aneurysm in 2004. He also reports two strokes since then. IQ testing in 2008 showed his verbal IQ was 74, performance IQ was 87 and full-scale IQ was 78. A current mental status showed his thought processes were relevant, logical and connected. But he was nonspontaneous and he did have expressive aphasia. Physically, the claimant was able to walk without assistance. His grip was 5/5 bilaterally but he did have some problems with fine motor activity, such as writing with the right hand.

* * *

- (6) Claimant lives in a house with three of his children and his granddaughter. He gets along 'very good' with his children and 'excellent' with his granddaughter. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, mopping, vacuuming, laundry, and grocery shopping (needs help). Claimant does not use a cane, walker or wheelchair. He uses a shower stool approximately three times a month. Claimant does not wear braces. Claimant received in-patient hospital care twice in 2009 at [REDACTED] in [REDACTED]. He was treated for brain dysfunction.
- (7) Claimant does not have a valid driver's license and does not drive. Claimant occasionally works in his garden, cares for animals and watches his granddaughter. He has visitors approximately five times a month and attends church twice a month. Claimant is computer literate.
- (8) The following medical records are persuasive:
 - (a) A January 21, 2010 DDS disability examination was reviewed. The internist provided the following history:

52-year-old white male presents for a disability examination due to history of aneurysm and stroke. Complains of difficulty communicating verbally and in

writing. He states that with prolonged writing more than 4-5 sentences, he writes letters out of order. Complains of persistence of mild weakness right arm and leg (dominant side). Other than writing, he does not report any other activities which he has difficulty using his hand for. He states he does not drive as a result of having had his second stroke while driving. Complains of impaired memory. States had examination by a psychiatrist yesterday which included testing of his memory.

States he last worked in 2007 as a drywall contractor stating he quit his job due to difficulty communicating which he feared endangered workers. This occurred after an incident where a worker was in danger but he was not able to communicate to warn him.

The consulting internist provided the following impressions:

- (1) SPCVA with mild residual expressive aphasia and mild decrease and fine motor control of the dominant right hand.
- (2) History of subarachnoid hemorrhage.
- (3) Diabetes Mellitus Type 2.
- (4) Hypertension controlled.

NOTE: The consulting internist did not state that claimant was unable to work.

- (b) A January 20, 2010 DDS psychological evaluation was reviewed. An Ed.D. psychologist provided the following history:

Complaints and symptoms: The patient is a 52-year-old male who complains that he had a brain aneurysm in 2004 with brain surgery installing two clips in his brain, and then he had two strokes, one in 2007, and one in 2008. He has problems with his long-term and short-term memory. He has problems with his concentration. He has difficulty comprehending what he reads at times. He has difficulty saying the things that he wants to say, and he presents with expressive

aphasia. He complains that this is getting worse. He was initially paralyzed on the right side of his body with the strokes, but now he is not paralyzed, though he continues to have some difficulty writing. He becomes dizzy at times. He becomes confused and disoriented at times especially if he is away from home. He has headaches but they are less frequent than they were in the past because of the use of medication. He states that he has the headaches twice a week now and they include nausea and vomiting.

* * *

Personal History

* * *

Claimant is 52 years old, 5'11" tall, and 270 pounds. He describes his health as 'fair.' He has had the brain surgery for the aneurysm, a surgery on his left knee, and a lump removed from his right breast. He has a history of the two strokes, high blood pressure, and diabetes. He describes his appetite as 'it varies,' eating one meal per day with a twenty-pound weight loss in the past year. He describes his sleep as 'not good,' having trouble staying asleep and getting three hours of sleep in a twenty-four hour period. He quit smoking cigarettes in 2007. He does not abuse caffeine. He quit using alcohol in 2007, and he denies having any problems with his use of alcohol. He also denies the use of any street drugs.

ACTIVITIES

Claimant arises at 3 a.m. In the morning, he will do some household chores, a little bit at a time and spend time with his granddaughter. In the afternoon, he will watch television and then play with his two dogs and his granddaughter. In the evening, he watches television before going to bed at midnight. He does some of the vacuuming, dusting, cooking, and laundry a little bit at a time with help from his family. He is not actively involving in any activities outside of his home.

* * *

MENTAL STATUS/MENTAL TREND

Claimant denies blackouts, delusions, hallucinations, paranoia, persecutory ideations, or obsessions. He did feel hopeless and worthless about a year ago, and he had thoughts of suicide in the past, but not currently, with no intentions or plans of hurting himself or anyone else. He has a history of two suicide attempts, the last in August of 2008. He denies any homicidal thoughts. He is not somatically preoccupied, but he does describe a sleep and appetite disturbance.

EMOTIONAL REACTION

Claimant's affect was appropriate to the situation, but he complains of having problems with depression and anxiety in the past though this has improved with his use of medication. He has a fear of 'all the things that are happening in the world.' When he is angry, he will read the Bible with no loss of control over his temper. He was outgoing and friendly prior to his surgeries, but now he is quiet, reserved, and somewhat withdrawn.

SUMMARY AND CONCLUSIONS

The claimant is a 52-year-old male who had brain surgery in 2004 because of an aneurysm. He also had two strokes, one in 2007, and one in 2008. He complains of having problems with both his short-term and long-term memory and concentration. He has difficulty with reading comprehension and expressive aphasia. He continues to have difficulty with weakness in his right hand, dizziness, confusion, disorientation, and headaches with nausea and vomiting.

The Ed.D. psychologist provided the following diagnoses:

- (1) Axis I—Cognitive Disorder NOS secondary to brain aneurysm post surgical;
- (2) Depressive Disorder NOS—in remission.

(3) Axis V/GAF—55.

PROGNOSIS

The potential for the patient becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded. The patient's presentation of memory loss and expressive aphasia interferes with his ability to function at a level necessary for him to obtain and maintain full-time, gainful employment.

* * *

NOTE: The Ed.D psychologist did not state that claimant was totally unable to work.

- (9) Claimant alleges a severe mental impairment based on his status post brain surgery/aneurysm (2004), status post stroke in 2007 and status post stroke in 2008. He also complains of having problems with both short-term and long-term memory and concentration. He has difficulty with reading, comprehension and expressive aphasia. He continues to have difficulty with weakness in his right hand, dizziness, confusion, disorientation, and headaches with nausea and vomiting. The Ed.D. psychologist retained by DDS for a comprehensive psychological evaluation did not state that claimant was not totally unable to work. In addition, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.
- (10) Claimant alleges a severe physical impairment based on his status post brain aneurysm and surgery and status post two strokes (no surgery required). The DDS consulting disability examiner made the following impressions:
- (1) Status post CVA with mild residual expressive aphasia, and mild decrease and fine motor control of the dominant right hand;
 - (2) History of subarachnoid hemorrhage, Diabetes Mellitus Type 2;
 - (3) Hypertension, controlled.

The consulting DDS internist did not state that claimant was totally unable to work. The medical record does indicate that claimant is unable to climb ladders or stairs, unable stand for an eight-hour shift, and unable to lift on a repetitive basis more than five to ten pounds. At this time, however,

there is no probative medical evidence to establish a severe disabling physical condition that totally precludes all sedentary work activities.

- (11) Claimant recently applied for federal disability benefits (RSDI/SSI) with the Social Security Administration. SSA recently denied his claim. Claimant filed a timely appeal.

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 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 SSI Listings. SHRT determined that claimant does not meet any of the Listings at this time.

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 contractor installing drywall.

Because of claimant's status post brain aneurysm and status post two strokes, in combination with his impaired reading comprehension and expressive aphasia, claimant is not able to supervise employees, and to warn them when they are in a dangerous situation. This means claimant is unable to return to his previous work as a contractor drywall installer.

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 combination of mental impairments: short-term memory dysfunction, long-term memory dysfunction, impaired concentration, impaired reading comprehension and expressive aphasia.

Unfortunately, the medical evidence of record does not substantiate that claimant's current mental impairments totally preclude all work activity. The consulting DDS Ed.D psychologist did not state that claimant was totally unable to work.

Second, claimant alleges disability based on a combination of physical impairments: weakness in his right hand, dizziness, headaches, and nausea with vomiting.

The medical evidence of record does not substantiate that claimant's current physical impairments totally preclude all work activity. The DDS consulting internist did not state that claimant was totally unable to work based on claimant's combined mental impairments.

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 (playing with his granddaughter, watching television and relating with his three children). He has two close friends outside his family which he sees on a regular basis. In addition, claimant does some of the vacuuming, dusting, cooking, dishwashing, and a little laundry.

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 decided claimant was not eligible for MA-P/SDA. Furthermore, claimant did not meet his burden of proof to show the department's denial of his application was reversible error.


Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis 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 BEM 260/261.

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

SO ORDERED.



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

Date Signed: July 25, 2011

Date Mailed: July 26, 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:

