

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-7825
Issue No: 2009; 4031
Case No: [REDACTED]
Load No:
Hearing Date:
January 6, 2010
Berrien 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 6, 2010, in Benton Harbor. The claimant personally appeared and testified under oath.

The department was represented by Darlene Leonard (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

By the agreement of the parties, the record closed on January 6, 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 (July 2, 2009) who was denied by SHRT (December 7, 2009) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.29 as a guide.
- (2) Claimant's vocational factors are: age--49; education—high school diploma; post high school education—one semester at [REDACTED]; work experience—print shop laborer.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when he was employed as a laborer at a print shop.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Anxiety disorder;
 - (b) Status post heart surgery;
 - (c) Arthritis in back;
 - (d) Arthritis in both knees;
 - (e) Unable to climb stairs, walk, sit, or stand Without pain; and
 - (f) Hypertension.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (December 7, 2009)

MEDICAL SUMMARY:

- (a) Claimant is alleging disability due to hypertension, back problems, arthritis in the knees, and anxiety attacks. He is 49 years old, has a 12th grade education with a history of skilled work.
- (6) An [REDACTED] report was reviewed.

CHIEF COMPLAINTS

Hypertension, back problems, right knee pain, arthritis in the knees.

Claimant was quizzed to a history of hypertension. He does report a 30-year history of such. He now makes use of Atenolol, 50 mg, daily; Hydrochlorothiasize, 25 mg daily and Dyzyde 37.7/25 mg, one table daily. He does not report a history of heart failure or stroke.

Claimant reports a history of coronary artery disease. He describes in 2002, he had the placement of two stents at [REDACTED]. He reports since that time he has had occasional 'fluttering' of the heart and does report one episode of chest discomfort in January 2008. He reports no further chest discomfort since that time. His symptoms are not related to exertion. In addition to the previously mentioned medication, he is currently on Isordil 5 mg twice daily as well as the previously mentioned beta blocker. He reports he has had quite recent treadmill examination within the last three months through [REDACTED].

Claimant also reports a history of arthralgias involving the lower back and right knee. He reports at age 27 he had an injury to his right knee when he describes he was attempting to do a karate kick. He subsequently underwent surgery to his right knee. He reports he continues to have discomfort in the joint from which he makes use over-the-counter analgesics. He also reports discomfort in his lower back since 2002, which he states is not referred or aggravated by coughing or sneezing. He finds it difficult to lift more than 20 pounds on a persistent basis. He states he has difficulty with bowling. He states it is difficult to do any type of repetitive bending or stooping. He tends to know worsening symptoms in cold damp weather and he could be stiff in the morning for 10 to 15 minutes.

* * *

SOCIAL HISTORY

Tobacco: one-half pack of cigarettes per day for 30 years.
Alcohol: Six beers per week.
Hobbies: Fishing.
Occupation: Dye-cast set up/foundry work.
Education: 12th grade.

* * *

CONCLUSIONS:

HYPERTENSION

Claimant reports a history of hypertension. His blood pressure today is noted show adequate control. I cannot appreciate any evidence of hypertensive retinopathy, peripheral vascular disease or congestive heart failure.

Claimant carries a history of coronary artery disease. He continues to describe rare palpitations and chest discomfort not suggestive of angina. The enclosed records suggest that claimant has had relatively recent stress testing which did not reveal any ischemic changes. Continued aggressive medical management for blood pressure and other risk factor modification would be clearly warranted.

KNEE AND BACK PAIN

Claimant reports a history of arthralgias involving the knee and back. At this time, he reported tenderness in movement in the right knee. There has been previous surgery to that joint. The enclosed record suggests a diagnosis of some degenerative changes. In addition, claimant also reports discomfort in movement in the lower back. With respect to the lower back, I cannot appreciate any evidence of nerve root impingement. Claimant appeared to walk normally, did not require the use of an assistive device and had no difficulty with orthopedic maneuvers. His station was stable.

The consulting internist did not state claimant is totally unable to work.

- (7) An [REDACTED] evaluation was reviewed.

DSM-IV ASSESSMENT

Axis I	300.21	Panic Disorder and Agoraphobia.
Axis I	309.81	Posttraumatic Stress Disorder
Axis I	296.30	R/O Major depressive disorder, recurrent, unspecified.
Axis I	v71.01	Adult antisocial behavior
Axis I	298.9	R/O Psychotic disorder NOS
Axis I	300.11	R/O Conversion Disorder

* * *

Axis V/GAF—39

Level/Description—some impairment in reality testing or communication (e.g. speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas such as work or school, family relations, judgment, thinking, or mood (e.g. depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).

* * *

HISTORY

Claimant says he can cope with being around a lot of people. To quote from claimant, he says he ‘panics and has claustrophobia.’ He says, ‘Something bad will happen to me. Can’t ride in car because something will happen.’ He says he gets increased heart rate and sweats and feels like he’s going to have a heart attack. He actually may have had two heart attacks. He certainly does have coronary artery disease and has had two stent placements.

He says he has been incapacitated from these symptoms since 2003. Not only because of panic, but he also has heart arrhythmia due to organic heart disease, not necessarily related to his anxiety disorder. He does get shortness of breath. Again, it is unclear at times whether it is a cardiac symptom or an anxiety symptom. He was a die cast worker for 15 years, but did not like it. He said the work is kind of hard, dangerous, and the fumes and noise bother him. He says he also has high blood pressure. In the past, he has had 200 MM of mercury systolics, now he is in the 150’s. He gets Valium from a primary care doctor, but says it is not effective for his anxiety and panic attacks. He says he is afraid to die, wishes he could do like he used to, for example, drive to [REDACTED] or [REDACTED].

* * *

MENTAL STATUS EXAMINATION:

He is 180 pounds, 5’7” tall. He says he has old knife wounds scattered all over his body; however, the most prominent is a 3 cm scar over his right eyebrow and 6 cm on the left underside of his neck. Speech is articulate English, normal rate, volume, and rhythm. He has fair eye contact. Affect is troubled. No auditory, visual or tactile hallucinations. In terms of delusions, I’m leaning more towards PTSD symptoms rather than true paranoia or at

least paranoid delusions. He certainly has non-delusional paranoia, but it's a coin toss as to whether the paranoia raises to delusional or psychotic proportions. He is not loose, not circumstantial or not tangential. Cognitively, he feels he's forgetful and feels that his ability to read and do mathematics is reduced. His mood is depressed with partial anhedonia.

ASSESSMENT

Difficult case. He does have antisocial tendencies. There does seem to be a degree of secondary gain not to work at a job he didn't like, but I believe he has genuine PTSD, possible major depression, possible paranoid psychosis. Panic disorder with agoraphobia, is most likely genuine.

* * *

The [REDACTED] Psychiatrist did not state that claimant was totally unable to work.

- (8) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), grocery shopping (needs to lean on the cart).
- (9) Claimant does not have a valid driver's license but drives an automobile approximately three times a month. Claimant is not computer literate.
- (10) The probative medical evidence does establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The [REDACTED] evaluation provides an Axis V/GAF of 39, which means some impairment in reality testing or communication, or major impairment in several areas such as work or school, family relations, judgment, thinking, or mood (e.g. depressed man avoids friends, neglects family, and is unable to work).
- (11) The probative medical evidence, standing alone, does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. However, the consulting internist reports a history of hypertension with a history of coronary artery disease and the placement of stents. The consulting internist also reports a history of arthralgias involving the knee and back. The consulting internist reports a history of learning disabilities.
- (12) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. SSA denied his application. 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).

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 prevent claimant from performing substantial gainful activity, 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 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.

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. BEM 260.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the 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. BEM 260. SHRT decided that claimant meets the severity and duration requirements using the *de minimus* test.

Therefore, 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.

Furthermore, SHRT evaluated claimant's eligibility under Listings 1.04, 4.01, and 4.04. SHRT concluded that claimant does not meet the severity and duration requirements of any listing. SHRT's decision with respect to claimant's listing eligibility is incorporated by reference.

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 previously worked as a laborer at a print shop. The medical/vocational evidence of record shows that claimant has heart disease and arthritis/pain in his knees. Claimant has difficulty climbing stairs. Because claimant's previous job as a laborer for a print shop required him to stand continuously for an eight-hour shift, he is unable to return to his prior work as a set up man for a print shop.

Also, based on claimant's history of heart disease and arthritic conditions, he is unable to return to his previous work as a set up man in a print shop because he is unable to stand continuously for an eight-hour shift and lift heavy objects repeatedly.

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. 20 CFR 416.920(f). BEM 260/261. 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 alone, does not establish that claimant is unable to work. Claimant has heart disease and limited stamina.

However, it is the combination of his physical and psychiatric impairments that prevent him from working. He has Panic Disorder with agoraphobia, Posttraumatic Stress Disorder, rule out Major Depressive Disorder, adult antisocial behavior, rule out Psychotic Disorder, and rule out Conversion Disorder. In addition, the consulting psychiatrist gave claimant an Axis V/GAF score of 39, which shows impairment in the areas of work or school, family relations, judgment, thinking and/or mood disorder.

In short, the Administrative Law Judge is persuaded that claimant is totally unable to work based on the combination of his mental and physical impairments.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the MA-P/SDA disability requirements under Step 5 of the sequential analysis.

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

SO ORDERED.



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

Date Signed: June 17, 2011

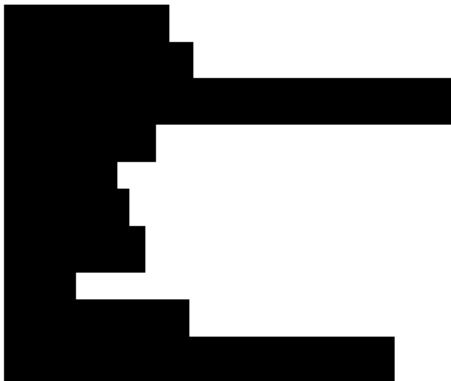
Date Mailed: June 20, 2011

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

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