

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 201016759
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 31, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on March 31, 2010.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

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 applied for MA-P and SDA on August 10, 2009.
- (2) Claimant is 45 years old.
- (3) Claimant has a 10th grade education.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of bakery employment, where he engaged in truck driving, packaging, and operating heavy machinery.
- (6) Claimant has a history of multiple car accidents.
- (7) Claimant's most recent car accident was in 1995 and was caused by a seizure.
- (8) Claimant suffers from lower back pain and hip pain as a result of the car accidents.
- (9) Claimant is able to ambulate with a minimal limp and does not require assistive devices for ambulation.
- (10) Claimant has a history of seizure disorder due to a closed head injury to the left temporal region in 1986.
- (11) Claimant's last seizure was 3 months before the date of the hearing.
- (12) Claimant takes Tegretol for his seizures and seizures may occur when the medication is inconsistently taken.
- (13) A psychological exam conducted by an independent Department examiner diagnosed claimant with mood disorder due to closed head injury, seizure disorder, and problems with primary support due to the closed head injury.
- (14) Claimant was given a GAF of 50 with a fair prognosis.
- (15) Claimant's immediate and recent memory is deficient.
- (16) Claimant was rated as "markedly limited" in several categories by the independent Department examiner, including the ability to remember locations and work-like procedures; the ability to understand and remember one or two-step instructions; the ability to maintain attention and concentration for extended periods; the ability to make simple work-related decisions; the ability to complete

a normal workday without interruptions from psychologically based symptoms; the ability to accept instructions and respond appropriately to criticism from supervisors; and the ability to respond appropriately to change in the work setting.

- (17) On December 9, 2009, the Medical Review Team denied MA-P and SDA, stating that claimant was capable of performing past relevant work. 20 CFR 416.920(e)
- (18) On January 12, 2010, claimant filed for hearing.
- (19) On February 3, 2010, the State Hearing Review Team denied MA-P, Retro MA-P and SDA, stating that claimant retained the capacity to perform a wide range of unskilled, medium work that avoids unprotected heights and dangerous moving machinery.
- (20) On March 31, 2010, a hearing was held before the Administrative Law Judge.

CONCLUSIONS OF LAW

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

Disability is defined as 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented more than sufficient evidence of mental deficiencies that has more than a minimal effect on the claimant's ability to do basic work activities. An independent Department examiner found that claimant's mental disorder markedly limited his ability to remember locations and work-like procedures, one or two-step instructions, and detailed instructions. In addition, claimant is markedly limited in his ability to maintain attention and concentration for extended periods, the ability to perform activities within a schedule, remembering detailed instructions, making decisions, and completing a normal workday without psychologically based disruptions. Finally, claimant is also markedly limited in his ability to accept instruction and respond appropriately to criticism from supervisor, the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, and the ability to respond appropriately to change in the work setting. Therefore, the undersigned is of the opinion that there is sufficient evidence in the case file to hold that claimant suffers from an extremely debilitating condition that has more than a minimal effect on his ability to perform basic work functions.

In the third step of the sequential evaluation, we must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment.

After considering the listings contained in Section 11.00 (Neurological), the Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. A listings disability finding for epilepsy requires, among other factors, occurrence of seizures more frequently than once a month, in spite of at least 3 months of prescribed treatment. None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the above.

However, the great weight of the evidence of record finds that claimant's mental impairment meets or equal the listings for mental impairments contained in section 12.00 (Mental Impairments).

Appendix 1 of Subpart P of 20 CFR 404, Section 12.00 has this to say about mental disorders:

The criteria in paragraph A substantiate medically the presence of a particular mental disorder. Specific symptoms, signs, and laboratory findings in the paragraph A criteria of any of the listings in this section cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings...

The criteria in paragraphs B and C describe impairment-related functional limitations that are incompatible with the ability to do any gainful activity. The functional limitations in paragraphs B and C must be the result of the mental disorder described in the diagnostic description, that is manifested by the medical findings in paragraph A...

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation.

Where we use "marked" as a standard for measuring the degree of

limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis. See §§ 404.1520a and 416.920a.

12.02 *Organic mental disorders:* Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied....

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional lability (e.g., explosive temper outburst, sudden crying, etc.) and impairment in impulse control; or
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., Luria-Nebraska, Halstead-Reitan, etc;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

In order to meet or equal the listings for mental impairment, a claimant may meet or equal the recommended listings contained in both the A and B criteria. A careful examination of claimant's medical records, from an independent Department examiner, shows that claimant meets both the A and B criteria.

Claimant's Department evaluations show evidence of memory impairments. On December 4, 2009, a Department agent completed a Social Summary on the claimant and noted that claimant appeared to have poor memory. In an Activities of Daily Living evaluation, claimant admitted that he had difficulty keeping appointments due to lack of transportation and memory problems. On April 17, 2010, an independent Department examiner confirmed, after a psychological evaluation, that claimant has deficient immediate and recent memory. Claimant was able to repeat 6 of 6 numbers forward and 0 of 6 numbers backward. In addition, Claimant was able to recall 0 of 3 unrelated objects after 3 minutes. Claimant testified that he has memory problems and problems with concentration. Therefore, the undersigned holds that claimant meets or equals the listings found in the A criteria.

Furthermore, the evidence of record shows that the claimant's memory problems are directly related to his organic mental disorder. Claimant's medical records show that these memory problems are most likely attributable to the closed head injury sustained in 1986. Claimant credibly testified that his memory problems were a direct result of his injury.

The evidence of record also shows that claimant meets the B criteria of the listing.

With regards to claimant's activities of daily living, the testimony and evidence of record show that while claimant has moderate difficulties in maintaining his daily activities, these do

not rise to the marked level. Claimant does not participate in household chores or yard work, but will occasionally fix frozen dinners and do some grocery shopping at a nearby gas station. These limitations do not appear to be based upon claimant's mental disabilities, but instead, his physical disabilities. Claimant is capable of self-grooming; the independent Department examiner remarked that claimant had fair grooming and hygiene. Claimant testified that he does not read due to headaches from his injury, but will watch TV. While the Administrative Law Judge is somewhat concerned with claimant's activity level, the ultimate impression given by the claimant is that his difficulties in maintaining his activities of daily living are moderate at best.

Claimant's difficulties in maintaining concentration, persistence and pace are another matter. *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. These limitations must be of such an extent that claimant is held to be markedly impaired with regard to concentration persistence and pace. 20 CFR 404 App 1, Sub P, 12.00 (C)(3).

In a typical Mental Residual Functional Capacity assessment, 8 categories are dedicated to Sustained Concentration and Persistence. Claimant received a rating from an independent Department examiner of "markedly limited" in 5 of these categories, including the categories of "ability to maintain attention and concentration for extended periods," "ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances," "ability to make simple work-related decisions," "ability to work in coordination with or proximity to others without being distracted by them," and "ability to complete a normal workday and worksheet without interruptions from psychological based symptoms and to perform a consistent pace without an unreasonable number and length of rest period." The

undersigned sees no reason to discount the independent Department examiner's opinion, as they are consistent with undersigned's own hearing observations and not contradicted by the record, and thus accepts this Mental RFC assessment as accurate.

Therefore, as these categories are exactly what were contemplated by the listings for the B criteria, the undersigned holds that claimant is markedly limited in maintaining concentration, persistence and pace.

Claimant has no listed episodes of decompensation, and therefore, does not meet those criteria.

Finally, *social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR 404 App 1, Sub P, 12.00 (C)(2). Claimant's mental RFC notes, with regard to social interactions, that claimant was "markedly limited" in his ability to accept instructions and respond appropriately to criticism from supervisors, and the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. Claimant was rated as "not significantly limited" in his "ability to interact appropriately with the general public," "ability to ask simple questions or request assistance," and "ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness."

While this assessment shows claimant is markedly impaired on maintaining social functioning in a work-related environment, the listings do not limit social functioning to this area. Social functioning is specifically defined as a general ability to maintain social functioning with individuals. Thus, while the mental RFC is useful in examining one area of claimant's life, it is hardly useful in examining all of his general social interactions.

However, the evidence of record is more than enough to fill in the gaps. Claimant stated that he receives visits from his mother for the purpose of cleaning his house. Claimant does his own shopping as needed, approximately one hour a week, by walking to a corner gas station. Claimant testified that he spends no time on any hobbies, interest, or other activities. The independent Department examiner noted that claimant has limited contact with neighbors and does not attend church. More importantly, claimant has been given a GAF of 50 by the independent Department examiner. A GAF between 41-and 50 is generally defined as having a serious impairment in social, occupational, or school functioning. This GAF score would be consistent, considering the record as a whole, with an individual with a serious impairment in social functioning.

Therefore, when combining claimant's Mental RFC assessment, and claimant's psychiatric record (including claimant's GAF scores), the Administrative Law Judge is able to hold that claimant is markedly impaired in social functioning.

As claimant is markedly impaired in concentration, persistence and pace, and social functioning, the Administrative Law Judge holds that the claimant meets the B criteria in the listings for mental impairments.

As claimant meets both the A and B criteria, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 12.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920.

Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.


With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in BEM 261. As claimant meets the federal standards for SSI disability, as addressed above, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in July, 2011.



Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/29/10

Date Mailed: 07/01/10

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 mailing 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.

RJC/dj

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