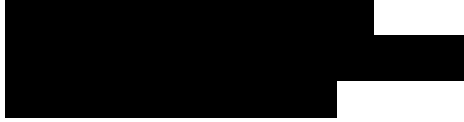


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201017096

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 September 18, 2009.
- (2) Claimant is 41 years old.
- (3) Claimant has a General Education Diploma and Vocational Training.
- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of a laborer.

- (6) Claimant has a history of meningitis, sleep apnea, stroke, post-traumatic stress disorder, anxiety, depression, and sarcoidosis.
- (7) In 1993, claimant suffered from meningitis and had a near death experience.
- (8) Claimant suffered two strokes in 1995 and 1996 due to factor V latent mutation.
- (9) The 1995 stroke cause paralysis of the claimant's left side, and the 1996 stroke cause paralysis of claimant's right side.
- (10) Claimant is weak on both sides of his body and has memory problems as a result of the two strokes.
- (11) In 2002, claimant was diagnosed with sarcoidosis.
- (12) On [REDACTED], an independent Department examiner completed a pulmonary function test.
- (13) Claimant has a Forced Vital Capacity (FVC) of 2.78 and a Forced Expiratory Volume in 1 section (FEV₁) of 1.85.
- (14) A form DHS-49, Medical Examination Report, was completed by claimant's treating source on [REDACTED].
- (15) Claimant's functional capacity is extremely limited, and only retains the capacity to lift less than 10 lbs frequently, is not to lift any weight heavier than 10 lbs, should not stand or walk more than 2 hours in an 8 hour day, only retains the capacity to reach with both hands, unable to do simple grasping, pushing and pulling, and fine manipulation with his right hand, is unable to operate foot/leg controls with his right foot, and has a stable condition.

- (16) A psychological exam obtained by the Department in response to claimant's application on [REDACTED].
- (17) Claimant was diagnosed with major recurrent depression and chronic panic disorder.
- (18) The independent Department examiner noted that claimant's stream of mental activity was slow and circumstantial with occasional stutter speech.
- (19) Claimant has a tendency to minimize symptoms and has a slow gait.
- (20) Claimant was able to recall 3 digits out of 5 forwards and 2 out of 5 backwards.
- (21) Claimant was able to recall two out of three objects after a few minutes.
- (22) Claimant was given a GAF of 55 with a fair prognosis.
- (23) Claimant's treating source also completed a Mental RFC assessment on [REDACTED].
- (24) Claimant was rated as markedly limited in several categories, including the ability to maintain concentration for extended periods, the ability to maintain attention and concentration for extended periods, and the ability to complete a normal workday without interruptions from psychologically based symptoms.
- (25) On December 30, 2009, the Medical Review Team denied MA-P and SDA, stating that claimant's impairments were non-exertional impairments.
- (26) On January 15, 2010, claimant filed for hearing.

- (27) On February 5, 2010, the State Hearing Review Team denied MA-P, Retro MA-P and SDA, stating that there is insufficient evidence in claimant's medical records.
- (28) On March 31, 2010, a hearing was held before the Administrative Law Judge.
- (29) Claimant was given more time to submit medical records; these records were submitted in a timely manner.

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 2010 is \$1,640. For non-blind individuals, the monthly SGA amount for 2010 is \$1,000.

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 a two strokes that has significantly decreased the strength of his right side, which has

more than a minimal effect on the claimant's ability to do basic work activities. In a DHS-49, Medical Examination Report, dated [REDACTED], claimant's treating source reported that claimant only retains the capacity to use his left hand/arm for simple grasping, pushing and pulling, and fine manipulation. Claimant is unable to operate foot/leg controls with his right foot. Additionally, claimant only retains the capacity to lift and carry less than 10 lbs frequently and should not lift any weight heavier than 10 lbs. Furthermore, the great weight of the evidence shows that claimant's mental disorders provide more than minimal difficulty in maintaining concentration, performing activities within a schedule, working with others, completing a normal workday without psychologically based disruptions, accepting instructions, responding to changes and plan independently. Finally, claimant has provided demonstrable evidence of anxiety, social withdrawal, and severe difficulties in maintaining social interaction. These symptoms have been chronic and part of a condition that started almost 10 years ago, according to the independent psychiatric evaluation. Claimant thus easily passes step two of our evaluation.

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 3.00 (Respiratory System), 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 chronic pulmonary insufficiency requires, among other factors, either a Force Expiratory Volume in 1 second (FEV₁) of 1.65 or less or a Forced Vital Capacity (FVC) of 1.85 or less, based on claimant's height of 72 inches. None of the medical evidence thus far presented to the Administrative Law Judge contains any test results that meet these requirements. In a pulmonary function test, conducted on [REDACTED], claimant received a FEV₁ of 1.85 and a FVC of 2.78. Therefore, claimant does not meet the listing for chronic pulmonary insufficiency.

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.

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

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

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following...
 - c. Sleep disturbance; or...
 - e. Decreased energy; or...
 - f. Feelings of guilt or worthlessness; or
 - h. Thoughts of suicide; or

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 must either meet or equal the recommended listings contained in both the A and B criteria, or meet or equal the listings in the C criteria. After examination of the C criteria, the undersigned holds that claimant does not meet this listing. However, a careful examination of claimant's medical records, both supplied from a treating source, and from an independent Department examiner, show claimant meets both the A and B criteria.

Claimant's psychological reports, as well as those administered by the Department show documented persistence of claimant's major recurrent depression, and post-traumatic stress disorder (PTSD). The documented medical evidence paints a portrait of a socially withdrawn individual. Claimant admitted to sleep disturbance due to sleep apnea and nightmares of the incident which led to claimant's PTSD symptoms. Claimant's records also show an individual with decreased energy, with frequent thoughts of guilt and worthlessness, which led to occasional thoughts of suicide. Therefore, the undersigned holds that claimant meets or equals the listings found in the A criteria.

With regards to claimant's activities of daily living, the testimony and evidence of record show that claimant has marked difficulties in maintaining his daily activities. Claimant testified at the hearing that he does participate in household chores and will occasionally cook for himself. However, claimant has a tendency to minimize his symptoms and exaggerate his abilities, according to observations by claimant's treating source and the independent Department examiner. In a DHS-49-D, Psychiatric/Psychological Examination Report, dated [REDACTED], claimant's treating source reported that claimant struggles with his hygiene, clothing, showers, and in

general, keeping a clean daily living environment; claimant would not have survived if his father did not assist him. Treating source records indicate that claimant constantly struggles with simple activities of daily living, and is almost totally dependent on a supportive environment provided by his father. Even if the Administrative Law Judge accepts claimant's testimony, "marked" is not defined by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. 20 CFR 404 App 1, Sub P, 12.00(C)(1). If claimant requires his father's assistance for most basic activities, or has trouble maintaining personal hygiene independently of the assistance of others, this is a significant interference with daily function. Therefore, the Administrative Law Judge finds the claimant's testimony at the hearing, concerning his ability to engage in daily activities, not credible, especially in light of treating source reports of his tendency to minimize his impairments. Therefore, the Administrative Law Judge holds that claimant is markedly limited in maintaining activities of daily living.

Claimant also has marked difficulties in maintaining 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. 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).

As stated above, in a typical Mental Residual Functional Capacity assessment, 8 categories are dedicated to Sustained Concentration and Persistence. Claimant received a rating from his treating source of "markedly limited" in 4 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 complete a normal workday and worksheet without interruptions from psychologically based symptoms”, and the “ability to work in coordination or proximity to others without being distracted by them.”

Furthermore, claimant received a rating of “moderately limited” in all other categories—the ability to carry out simple, one of two-step instructions, the ability to carry out detailed instructions, the ability to sustain an ordinary routine without supervision, and the ability to make simple work related decisions. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*, 473 F. 3d 742 (6th Cir. 2007); restated (again) in *Hensley v. Commissioner*, No. 08-6389 (6th Cir. July 21, 2009). The undersigned sees no reason to discount claimant’s treating source opinions, as they are consistent with another psychiatric report from an independent source, which reported that claimant can only recall 3 digits out of 5 forwards and 2 out of 5 backwards. Therefore, the undersigned 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 behavior extremes. Claimant was rated as moderately limited in his ability to interact appropriately with the general public, and in his ability to maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness.

While this assessment shows claimant's 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 testified that he spends most of his time indoors, away from the public. Both psychiatric examinations remark that claimant has an antagonistic perspective of the world; the independent Department examination notes that claimant feels people are against him, following him, and may hurt him. The independent Department examiner also noted that the claimant had a snappy and frustrated mood during the examination. Although claimant was been given a GAF of 55 by the independent Department examiner, which is generally defined as having a moderate symptoms or any moderate difficulty in social, occupational, or school functioning, this score is inconsistent with observations by the independent Department examiner and claimant's treating source.

In a form DHS-49-D, Psychiatric/Psychological Examination Report, dated [REDACTED], claimant's treating source reported treating claimant for more than 20 years.

The treating source reported that claimant is unable to communicate easily with others and is quick to anger over his situation. The treating source also noted that the claimant escapes from his situation of hopelessness, not by actions in the real world, but rather by altering his state of consciousness. Claimant has a blurred perspective of the outside world, finding it difficult to recognize and less friendly.

Therefore, when combining claimant's Mental RFC assessment, and claimant's psychiatric record, particularly the opinion of his treating source, who has been treating him for more than 20 years, the Administrative Law Judge is able to hold that claimant is markedly impaired in social functioning.

As claimant is markedly impaired in activities of daily living, concentration, persistence and pace, and social functioning, the Administrative Law Judge holds that the claimant more than 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 PEM 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 August, 2011.



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

Date Signed: 08/03/10

Date Mailed: 08/04/10

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

cc:

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