

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: 2010-43602
Issue No: [2009; 4031](#)
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 17, 2010
[Newaygo](#) 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 August 17, 2010, in White Cloud. The claimant was represented by his mother,

[REDACTED].

The department was represented by Shanta Smith (FIS) and Kimberly Polasek (Lead ES).

The Administrative Law Judge appeared by telephone from Lansing.

By the agreement of the parties, the record closed August 17, 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/retro applicant (January 8, 2010) who was denied by SHRT (July 27, 2010) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age--29; education--high school diploma; post high school education--none; work experience--pressroom worker for [REDACTED], customer service representative, cashier for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked (part-time) in the [REDACTED] in 2009.

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

- (a) Migraine;
- (b) Two major strokes;
- (c) Numbness on the right side;
- (d) Right hand and right leg dysfunction;
- (e) Status post two strokes (1996 and 1997);
- (f) Frequent TIAs (averaging one per month); and
- (g) Obesity (320 pounds).

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

OBJECTIVE MEDICAL EVIDENCE (July 27, 2010)

SHRT decided that claimant is able to perform unskilled light work. SHRT evaluated claimant's impairments using SSI Listings 1.01, 11.01, 9.08, and 3.01. SHRT decided that claimant did not meet any of the applicable listings. SHRT denied disability based on Med-Voc Rule 202.20 since claimant is able to perform unskilled light work.

(6) Claimant lives with his mom and stepdad and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, vacuuming (sometimes), light cleaning, laundry and grocery shopping. Claimant does not use a cane, walker, and wheelchair. He uses a shower stool approximately three times a month. Claimant does not wear braces. Claimant was not hospitalized in 2009 or 2010 as an inpatient.

(7) Claimant has a valid driver's license but does not drive. Claimant is computer literate.

(8) The following medical records are persuasive:

- (a) A [REDACTED] Mental Status Exam and Psychological Testing for Cognitive Impairment Report was reviewed.

The Ph.D. psychologist provided the following history:

Claimant is a 28-year man who is applying for disability benefits based on chronic migraines, claims of memory loss, and some numbness on his right side. He said he has had two major strokes, at age 15. He said he believes he has also had 16 or 20 TIA's since then. He also suffers from sleep apnea.

MENTAL STATUS:

The Ph.D. psychologist made the following observations: Claimant is not highly motivated to do the things he can do for himself. It is difficult to know if somebody is exaggerating symptoms, but I have the impression that he was capable of doing more than what he is doing. He has never had a course of therapy, and does not appear to have any insight into this.

Claimant has a full-scale IQ of 70.

The Ph.D. psychologist provided the following diagnosis:

Axis I--dysthymic disorder, early onset, mild to moderate; nicotine dependence.

Axis V/GAF--55.

- (b) An [REDACTED] Consultative Evaluation was reviewed. The physician provided the following neurological report:

Strength is 5/5 throughout; however, he is noted to have slowed initiation of the movements on the right side with both arm and legs. Claimant has numbness noted with touch of the right face and thigh, otherwise sensation was intact. Hoffman's and Traubner's of the upper extremities were negative, bilaterally. Cerebellar testing in the form of finger to nose, rapid alternating movements, heel to shin, pass pointing were all noted to be negative bilaterally. Claimant had a negative Romberg's and negative variation and position sense.

* * *

The physician provided the following conclusions:

1. History of previous strokes and reoccurring migraine-type headaches with TIA-like symptoms associated with the patient's migraine headaches. He is noted to have numbness of the right face and thigh on exam today. He is noted to have slowed initiation movements of the upper right and lower extremities.

* * *

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

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The consulting Ph.D. psychologist provided the following diagnoses:

Axis I--Dysthymic disorder, early onset, mild to moderate; nicotine dependence.

Axis V/GAF--55.

The claimant's full-scale IQ was 70. The consulting Ph.D. psychologist did not state that claimant is totally unable to work.

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions. The medical records show the following diagnoses: History of previous strokes and recurring migraine-type headaches with TIA light symptoms associated with claimant's migraine headaches. Numbness of the right face and thigh. **NOTE:** The consulting internist did not state that claimant was totally unable to work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. He alleged the same impairments which are under review here. 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).

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 limit his ability to work, 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 mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes. PEM/BEM 260/261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by consideration of all factors in each particular case.

STEP #1

The issue at Step 1 is whether claimant is performing Substantial Gainful Activity (SGA). If claimant is working and earning substantial income, he is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. PEM/BEM 260/261.

Claimants who are working, 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 Medical-Vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets Step 1.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Unless an impairment is expected to result in death, it must have existed or be expected to exist for a continuous period of at least 12 months from the date of application.

20 CFR 416.909. The durational requirement for SDA is 90 days.

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 Step 2 criteria. 20 CFR 416.920(c). SHRT decided that claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets Step 2.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

However, SHRT evaluated claimant's eligibility using SSI Listings 1.01, 11.01, 9.08, and 3.01. SHRT decided that claimant does not meet the applicable Listings.

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 pressroom assistant for the [REDACTED]. Claimant's previous work was light work.

The Medical/Vocational evidence of record shows that claimant has chronic headaches and some numbness on his right side. Based on the medical evidence on the record, claimant is able to return to his previous work as a pressroom assistant.

Claimant does not meet Step 4.

STEP #5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED] published by the [REDACTED]. [REDACTED] at 20 CFR 416.967.

The Medical/Vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Unskilled sedentary work includes working as a ticket taker for a theater, as a parking lot attendant, as a janitor, or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to his return to work was his chronic migraine headaches. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is credible but out of proportion to the objective medical evidence as it relates to claimant's ability to work. Although claimant's pain medications do not totally eliminate his pain, they do provide some relief.

It should be noted that even though claimant has several significant mental impairments, he does have demonstrable residual work capacities. Claimant is computer literate, he has a valid driver's license, and he performs a significant number of activities of daily living.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his chronic migraine headaches. Claimant currently performs many activities of daily living, has an active social life with his mother, and goes to his medical appointments. The medical evidence, taken collective, shows that claimant is able to perform unskilled sedentary work (SGA).

Based on this analysis, the department correctly denied claimant's MA-P/SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does not meet the MA-P/SDA disability requirements under PEM 260/261. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis as described above.

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

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 12, 2010

Date Mailed: November 12, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JWS/tg

cc:

