

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

IN THE MATTER OF:

[REDACTED]  
[REDACTED]  
[REDACTED]

Reg. No: 2011-1913  
Issue No: 2009; 4031  
Case No: [REDACTED]

Hearing Date:  
December 8, 2010  
Bay 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 December 8, 2010, in Bay City. The claimant personally appeared and testified under oath.

The department was represented by Nancy Mayhew (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was mailed to the State Hearing Review Team (SHRT) on December 8, 2010. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

The Administrative Law Judge appeared by telephone from Lansing.

**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 (exertional) 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/SDA applicant (May 28, 2010) who was denied by SHRT (January 5, 2011 and October 27, 2010) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requests retro MA-P for February, March, and April 2010.
- (2) Claimant's vocational factors are: age--47; education—11<sup>th</sup> grade; post high school education—attended [REDACTED] for four semesters (studied English and Business Administration); work experience—broiler chef and food prep for an Italian restaurant, laborer for a tree service, laborer for a fencing company.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 1991 when he worked as a broiler chef and food prep.
- (4) Claimant has the following unable-to-work complaints:
  - (a) Paranoid schizophrenia;
  - (b) Hepatitis C;
  - (c) Emphysema;
  - (d) Pulmonary dysfunction;
  - (e) Shortness of breath;
  - (f) Hypertension;
  - (g) GERD;
  - (h) HIV; and
  - (i) Suicidal thoughts.
- (5) SHRT evaluated claimant's medical evidence as follows:

**OBJECTIVE MEDICAL EVIDENCE (January 5, 2011)**

**MEDICAL SUMMARY:**

New evidence provided by claimant to the Office of Administrative Hearings, is psychiatric evidence which does not significantly alter the prior determination of the MRT and SHRT. See medical evidence dated 9/2010.

**ANALYSIS**

The objective medical evidence supports that the claimant would reasonably retain the ability to perform light exertional tasks of a simple and repetitive nature.

\* \* \*

**OBJECTIVE MEDICAL EVIDENCE (October 27, 2010)**

**MEDICAL SUMMARY:**

The claimant was diagnosed with HIV in 1995 and is currently not being treated. His lungs are clear and the abdomen is within normal limits. (DDS medical records.)

The mental status noted excellent mood. His speech was clear and coherent. His affect was somewhat restricted. He was alert and fully oriented. (DDS medical records.)

**ANALYSIS:**

The objective medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of light unskilled work.

\* \* \*

- (6) Claimant is homeless and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming, laundry, and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces. Claimant was most recently hospitalized at the [REDACTED] facility in [REDACTED]. Claimant has been hospitalized at the [REDACTED] four times in the past.
- (7) Claimant does not have a valid driver's license and does not drive. Claimant walks everywhere. He is able to walk three blocks consecutively without shortness of breath. Claimant attends church twice a month.
- (8) The following medical records are persuasive:
  - (a) An [REDACTED] consultation report was reviewed.

Claimant was admitted to the [REDACTED] [REDACTED] due to suicidal tendencies.

A treating [REDACTED] provided the following diagnostic impression:

- (1) Depression;
- (2) HIV Positive;
- (3) Hepatitis C;
- (4) Chronic obstructive pulmonary disease;
- (5) Gastroesophageal reflux disease;
- (6) Polysubstance abuse;
- (7) Pulmonary hypertension;
- (8) Lower extremity tinea pedis;
- (9) Hypotension.

- (b) A [REDACTED] discharge summary was reviewed.

The psychiatrist provided the following case summary:

Claimant is a 47-year-old single, unemployed, European-American male, admitted to the hospital on August 24, 2010. The history and physical examination was completed on August 25, 2010. He presents with suicidal ideation, with a plan to jump from a bridge or to hang himself with piano wire. He admits to three to four previous psychiatric hospitalizations. He has positive HIV status but he has been off his HIV medications now for at least eight months. He admits to poor sleep, depression, suicidal ideation, worry, irritability, and restlessness. There is a family history of substance abuse and family history of possible psychiatric illness. He admits to alcohol and marijuana use with alcohol use leading to some legal problems. He denies involvement with marijuana. He also admits to cocaine but denies impairment. He expressed there had been multiple hospitalizations in the past. He reports helplessness and hopelessness.

**DSM IV DIAGNOSTIC IMPRESSION:**

Axis I: Major depression, recurrent, rule out bipolar disorder with depressed mood.

Axis II: Deferred.

Axis III: History of positive HIV, emphysema, Hepatitis C, chronic obstructive pulmonary disease.

Axis IV: Stressors include unemployment and homelessness.

Axis V/GAF—34.

Upon discharge, claimant's Axis V/GAF score was 43.

**NOTE:** The psychiatrist who examined claimant at the [REDACTED], did not state that claimant was unable to work.

- (9) Claimant alleges a disabling mental impairment based on the following diagnosis: major depression recurrent, rule out bipolar disorder, or depressed mood. The probative psychiatric reports in the record state that claimant's Axis V/GAF score was 32 upon admission and 43 upon discharge. These scores show a significant impairment during his September 2010 hospitalization. However, claimant did not provide a DHS-49D or DHS-49E to establish his current mental residual functional capacity.
- (10) Claimant alleges a physical/exertional impairment based on the following diagnoses: History of HIV; emphysema; Hepatitis C; chronic obstructive and pulmonary disease. Claimant did not provide a DHS-49 Physical Capacity Assessment. The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do establish that claimant has significant physical impairments especially emphysema and chronic obstructive pulmonary disease. However, none of the internists who evaluated claimant in 2008-2009 reported that he was totally unable to work. The record does indicate that claimant has sufficient endurance to walk three blocks consecutively without major symptoms. At the hearing, claimant testified that he walks "everywhere." 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. His application was denied; he 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 mental/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 the applicable SSI Listings. SHRT decided that claimant does not meet any of the applicable SSI 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 was last employed as a broiler chef for a local restaurant. Claimant's work as a chef required him to stand continuous for eight hours and work around ovens and exposed flames from the cooking stoves. Because of claimant's combination of suicidal tendencies of major depression and bipolar disorder, with depression, as well as his

chronic obstructive pulmonary disease, claimant is not able to return to his previous work as a broiler chef.

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: major depression, bipolar disorder and suicidal tendencies. The collective medical evidence on claimant's bipolar disorder and major depression shows that claimant has been successfully treated for his mental impairments; most recently in August 2010. Unfortunately, the psychiatric record does not show that claimant's mental impairments totally preclude him from all substantial gainful employment, at this time. None of the psychiatrists who provided reports on claimant's psychiatric condition stated that he was totally unable to work.

Second, claimant alleges disability based on a combination of physical impairments: emphysema, Hepatitis C, HIV, chronic obstructive pulmonary disease, GERD, pulmonary hypertension in lower extremity, tinea pedis. While the medical record does show that claimant has several significant impairments, the medical evidence of record does not substantiate that claimant's current physical impairments, taken collectively, totally preclude all work activities. None of the internists who provided reports on claimant's physical condition stated that he was totally unable to work.

Third, claimant does not allege disability due to chronic body pain.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combined mental/physical impairments. Currently, claimant performs many activities of daily living and is able to walk to all of his appointments. It should be noted that claimant has difficulty relating with people both socially and in employment context. However, these personality defects do not prevent claimant from performing all substantial gainful activity.

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

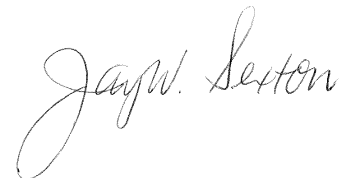
Accordingly, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis as presented above.

**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.



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

Date Signed: August 16, 2011

Date Mailed: August 16, 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.

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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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