

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

IN THE MATTER OF:

[REDACTED]  
[REDACTED]  
[REDACTED]

Reg. No: 2011-3608  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No:  
Hearing Date:  
January 6, 2011  
Chippewa 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, 2011, in Sault Ste. Marie. The claimant personally appeared and testified under oath.

The department was represented by Dawn Mastaw (ES).

The Administrative Law Judge appeared by telephone from Lansing.

By the agreement of the parties, the record closed on January 6, 2011.

**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/SDA applicant (June 10, 2010) who was denied by SHRT (November 16, 2010) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.21 as a guide. Claimant requested retro MA for March 2010.
- (2) Claimant's vocational factors are: age--52; education—high school diploma; post high school education--none; work experience—operated heavy equipment (skidder) for a logging company; claimant has been a logger since 1980.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since May 27, 2010 when he worked as a heavy equipment/skidder operator for a logging company.
- (4) Claimant has the following unable-to-work complaints:
  - (a) Panic attacks; and
  - (b) Shortness of breath.
- (5) SHRT evaluated claimant's medical evidence as follows:

**OBJECTIVE MEDICAL EVIDENCE (November 16, 2010)**

**MEDICAL SUMMARY:**

In 6/2010 echocardiogram and chest x-rays were normal. (Pages 100 and 105.)

The mental status exam noted claimant had contact with reality. His mental activity was spontaneous; his mood was depressed and anxious. He had a labile affect and was fully oriented. (Pages 129-132.)

**ANALYSIS:**

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

\* \* \*

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, and laundry, grocery shopping (sometimes), mopping and vacuuming. Claimant does not use a cane, walker, and wheelchair. Claimant does not use a shower

stool and he does not wear braces. Claimant was not hospitalized as an inpatient in 2010 or 2011.

- (7) Claimant does have a valid driver's license and drives an automobile approximately six times a month. Claimant is computer literate.
- (8) The following medical records are persuasive:
  - (a) A Ph.D. psychological assessment (DDS exam) was reviewed.

The psychologist provided the following reason for referral:

Claimant is being referred for a psychological assessment to include a mental status exam by the Disability Determination Service (DDS). He is applying for disability due to panic attacks, chest pain, shortness of breath, and spurs on the neck, weakness and fatigue.

\* \* \*

### **HISTORY OF ILLNESS**

**Complaints and Symptoms:** The claimant reported that he always worries about his health. He related that he tends to worry about everything. The claimant indicated that he has bad dreams all of the time. He reported that he has pain in his chest frequently. Claimant related that he prefers just to stay home. He indicated that he has spurs on his neck for the last 4 to 5 years. Claimant reported that the doctor just gave him shots of cortisone. He related that he was a logger for 30 years. The claimant indicated that in the late 80's he was hit by a branch of a large tree in the head. He reported that he had pain and right side numbness. The claimant related that he feels weakness, fatigue, and has difficulty focusing. He indicated that this may be from his medications. The claimant reported he has suffered from panic attacks for the last 6 years. He related that he just saw the psychiatrist. The claimant indicated that if he has pain some place he will experience shortness of breath. He reported that he has an increased heart rate and feels like he is having a heart attack. The claimant related that he starts to hyperventilate. He

indicated that he feels like he is going to pass out during this time. The claimant reported that before his medications, he had 2 to 3 panic attacks a month. He related that he used to drive to the hospital and sit in the parking lot until he calmed down because he doesn't have insurance. Claimant indicated that he has now started to feel claustrophobia. He reported that he is also scared of heights. The claimant related that he can't be in crowds. He indicated that he couldn't stay at a [REDACTED] football game because of the crowd. The claimant reported that he is sleeping okay. He related that he has low sugar so he has to eat during the day. The claimant indicated that he has had asthma since he was a child. He reported that he has high blood pressure and high cholesterol.

\* \* \*

The Ph.D. psychologist provided the following diagnoses:

Axis I—panic disorder, with agoraphobia;  
Depressive disorder, NOS.

\* \* \*

Axis V—GAF—52.

### **MEDICAL SOURCE STATEMENT**

The claimant has a very difficult time with panic attacks and agoraphobia. He doesn't like to be in any crowds and feels a strong urge to escape when he is in one. The claimant also has some depressive symptoms which are affecting his motivation levels. He has several physical difficulties which seem to severally affect him. Claimant's psychological and physical difficulties would make it very difficult to obtain or maintain any gainful employment.

\* \* \*

- (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 clinical evidence provided by the Ph.D. psychologist shows the following diagnoses: Panic disorder with agoraphobia and depressive disorder, NOS. Claimant received and Axis V—GAF score of 52 (moderate). The Ph.D. psychologist stated:

Claimant's psychological and physical difficulties make it very difficult to obtain or maintain gainful employment. The Ph.D. psychologist did not state that claimant was 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 for the required period of time. The medical records are scant. The medical records do not clearly and unambiguously show that claimant is totally unable to work due to a physical impairment. There are no recent internal medicine reports which establish a severe physical impairment.
- (11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. SSA recently denied claimant's SSI claim.

### **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 alleged 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 and 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.

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.

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 heavy equipment operator for a logging operation in Northern Michigan. Claimant's work as a skidder operator was light semi-skilled work.

The Medical/Vocational evidence of record shows that claimant has a reduced ability to cope with large crowds. He also has agoraphobia. Claimant testified that he suffers from panic attacks when he goes to the woods.

Since claimant has panic attacks when he works in the woods, he is unable to return to his previous occupation as a skidder driver for a logging company.

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). 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.

Based on the exertional and nonexertional evidence of record, claimant is able to perform sedentary work. Notwithstanding claimant's mental limitations (agoraphobia and panic attacks), claimant is able to do simple unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant, as a school janitor, or as a greeter for [REDACTED].

It should be noted that claimant has demonstrable residual work capabilities. Claimant testified that he is able to perform many activities of daily living including dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping (sometimes). In addition, claimant has a valid driver's license and drives an automobile approximately six times a month.

Finally, claimant has regular relationships with his grandchildren who live nearby. Taking the record as a whole, claimant is able to perform unskilled sedentary work (SGA).

The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it decided the claimant was not eligible for MA-P/SDA. Furthermore, claimant did not meet his burden of proof to show that the department's denial of his applications was reversible error.

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 Maura D. Corrigan, Director  
Department of Human Services

Date Signed: May 31, 2011

Date Mailed: June 1, 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

cc:

