

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: 2008-28766
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 10, 2008
Wayne 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 in Detroit on November 10, 2008. Claimant personally appeared and testified under oath.

The department was represented [REDACTED]

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

- (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 a MA-P/SDA applicant (March 27, 2008) who was denied by SHRT (August 29, 2008) due to claimant's failure to establish a severe impairment which meets the MA-P/SDA requirements.

(2) [REDACTED]

(3) Claimant has not performed Substantial Gainful Activity (SGA) at any time either in prison or out of prison.

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

- (a) Status post back injury;
- (b) Poor vision;
- (c) Incarcerated for 20 years;
- (d) Status post mental health treatment/psych ward;
- (e) Unable to walk independently due to poor vision;
- (f) Poor memory;
- (g) Unable to understand verbal directions.

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

OBJECTIVE MEDICAL EVIDENCE (August 29, 2008)

SHRT denied claimant's MA-P/SDA application because he did not submit medical evidence to establish that he has a severe impairment which meets the department's MA-P/SDA standards.

(6) Claimant lives with his father and performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, and light cleaning. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces on his neck, back, arms, or

legs. Claimant received psychiatric/inpatient hospital care on three separate occasions in 2007 and two separate occasions in 2008.

- (7) Claimant does not have a valid driver's license and does not drive an automobile.

Claimant is not computer literate.

- (8) The following medical records are persuasive:

- (a) [REDACTED]
Cardiovascular report was reviewed. The physician provided the following diagnoses: hypertension, benign essential; headaches; neuropathy, inflammatory; reflux esophageal. The physician provided the following diagnosis on February 26, 2008: hypertension and eye vision headaches.
- (b) A June 4, 2007 [REDACTED]
[REDACTED] report was reviewed. The report provides the following disabilities and limitations: Disability: cardiac and circulatory conditions. Limitation: independent. Disability: digestive system disorders. Limitation: independent.
- (c) A January 24, [REDACTED]
report was reviewed. The ophthalmologist reports the following chief complaint: unexplained decrease in vision left eye, uncertain if functional or pathologic.

The ophthalmologist provided the following diagnosis: unexplained decrease in vision in a patient with normal angiography, and normal optic disc.

- (9) The probative psychological evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that he has difficulty reading and following commands. His father cooperated with this testimony. However, there are no psychological reports in the record to substantiate the type and degree of claimant's mental impairment. Also,

claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity.

(10) The probative medical evidence 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 reports provide the following diagnoses: unexplained decrease in vision in left eye; cardiac and circulatory conditions; digestive system disorders. The physicians who provided medical reports did not state that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA benefits based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform normal work activities.

The department denied claimant's application for MA-P/SDA because claimant did not substantiate an impairment which meets the department's severity and duration requirement.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3)

the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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 a severe mental impairment limits claimant's ability to perform substantial gainful activity, 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 telephone and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C)(b).
- (b) **Social Functioning.** Social functioning refers to an individual's capacity to interact independently and appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C)(2). Social functioning includes the ability to get along with other such as family members, friends, neighbors, grocery clerks, landlords or bus drivers.

Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving co-workers. 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C)(2).

- (c) **Concentration, Persistence or 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, Appendix 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. Whenever possible, however, a mental status examination or psychological test data should be supplied by other available evidence. 20 CFR, Part 404, Subpart P, Appendix 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 260/261. "Disability" as defined by MA-P/SDA standards is a legal term which is individually determined by a 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 is 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, are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

Claimant testified that he is currently under the care of a psychiatrist and a Ph.D. psychologist. However, there are no reports from either professional.

The vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability test.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Claimant must establish that he has an impairment which is expected to result in death or has lasted or is expected to last for 12 months and completely prevents all work activities.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

STEP 3

The issue at Step 3 is whether claimant meets the listing of impairments in the SSI regulations. Claimant does not allege disability based on the listings.

Therefore, claimant does not meet the Step 3 disability test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. There is no evidence of record of any kind of substantial gainful activity. Since claimant has not performed any substantial gainful activity in the past 15 years, he meets the Step 4 disability test.

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/psychological evidence in the record, that his combined mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on mental impairments (inability to follow instructions and short term memory dysfunction). Although claimant testified that he is under the care of a M.D. psychiatrist and a Ph.D. psychologist, neither of these professionals submitted a report for review. Also, claimant did not submit a DHS-49D or a DHS-49E to establish his

mental residual functional capacity. Since there is no psychological/psychiatric evidence of claimant's current mental status, the claimant does not meet the MA-P/SDA requirements for a mental disability.

Second, claimant alleges disability based on back dysfunction, vision dysfunction and difficulty walking. The medical evidence in the record does not support claimant's claim of total disability based on a physical impairment. The records provided [REDACTED] a diagnosis of hypertension and eye vision headaches. These diagnoses do not support a determination of total disability.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on the combination of his mental impairments (memory dysfunction) and his physical impairments (vision dysfunction, back pain and difficulty walking). Claimant currently performs his activities of daily living and has an active social life with his father with whom he lives. Taking the medical record as a whole, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled sedentary work (SGA). In this capacity, claimant is able to work as a ticket taker for a theater, as a parking lot attendant, and as a [REDACTED]

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis, as presented above. Claimant is also able to work as a construction laborer digging trenches and ditches for construction projects. Claimant is also able to work as a landscape laborer digging holes and planting trees and scrubs.

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.

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: December 29, 2008

Date Mailed: January 5, 2009

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.

JWS/vmc

[REDACTED]