

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: 2008-27843
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 2, 2008
Jackson 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 Jackson on December 2, 2008. Claimant personally appeared and testified under oath.

The department was represented by Don Baiak (FIM).

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 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/SDA applicant (December 21, 2008) who was denied by SHRT (August 20, 2008) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) [REDACTED]

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2001 when he worked at a roofing truss company.

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

- (a) Major depression;
- (b) Emphysema;
- (c) Arthritis;
- (d) Angina;
- (e) Peptic ulcer.

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

OBJECTIVE MEDICAL EVIDENCE (August 20, 2008)

Claimant was admitted in 1/2008 due to depression with suicidal ideation. He was noted to have chronic obstructive pulmonary disease, without current exacerbation and coronary artery disease (page 29).

A psychological evaluation, dated 4/2008, showed claimant's grooming and hygiene were appropriate. His communication was good and speech was good (page 17). Eye contact was good. Thoughts were logical, organized and goal directed. His mood was mildly depressed. Thought content was appropriate with no apparent thought disorder (page 18). Diagnosis included major depressive disorder, recurrent and mild and history of alcohol dependence (page 19).

An exam dated 5/2008 showed claimant was 69 inches and 123 pounds. His lungs showed decreased air movement bilaterally, coarse breath sounds and prolonged expiration. Hyper-resonant percussion was noted. Diameter of the chest wall was increased.

No accessory muscles of respiration were used. There was no cyanosis or clubbing noted. There was no pitting edema. Heart sounds were regular (page 12). Power was 5/5 in the bilateral upper and lower extremities. Muscle bulk and tone were normal. Deep tendon reflexes were intact and symmetrical. Hands did not show any synovitis. Wrist, elbows and shoulders did not show any swelling, redness or tenderness. Range of Motion (ROM) was normal. There was no significant tenderness or spasm in the spine and ROM was normal. Hips, knees and ankles did not show any redness, swelling or tenderness. ROM was normal (page 5).

Pulmonary Function Studies (PFS) dated 5/2008 showed claimant was 69 inches tall and his best FEV1 was 1.97 and best FVC was 3.39 (pages 8-9).

(6) Claimant lives [REDACTED] performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), light cleaning, vacuuming, laundry (sometimes) and grocery shopping. Claimant does not use a cane, a walker, or a wheelchair. He uses a shower stool approximately 4 times a month. He does not wear braces on his arms, legs, or wrists. Claimant was hospitalized in 2007 for unstable angina with a heart catheterization. He was hospitalized in 2008 for obstructive pulmonary disease.

(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) A May 15, 2008 internal medicine consultative report was reviewed.

The internist provided the following history:

[REDACTED] who was evaluated due to COPD, emphysema, arthritis with multiple joint complaints, depression, hyperlipidemia and peptic ulcer disease. He was diagnosed with COPD and emphysema in 2004. He has coughing episodes, worse at night, along with wheezing and shortness of breath on heavy activity. On level ground, he can walk 1 mile; going uphill he can walk less than half a block. When it is rainy and humid, he has

more breathing problems. He has thick secretions in the morning. He wakes up frequently at night with shortness of breath. He cannot lift or push anything heavy due to shortness of breath. He has not been admitted to a hospital in the last 2 years for lung related issues. He does not have pneumonia. He has taken antibiotics once in the last year due to lung infection. He has not been intubated. He uses inhalers for his breathing problems.

He was [REDACTED] 2007 for chest pain and was told he had a slight heart attack. A heart catheterization showed mild coronary artery disease.

Claimant has had joint pain for 20 years or so; sometimes in the knees, hips and hands. It started in the knees and later the hips started being affected. He noted pain in the lower back and then it went to the hands, wrists, shoulders and elbows. His fingers swell up and on with the wrist. He has not seen a joint specialist and has not been diagnosed with inflammatory arthritis. In the morning, his hands are stiff and he has difficulty gripping or making a fist. Other days, the joints are not too bad and he can move them better. He denies the knees swelling.

The physician provided the following assessment:

- (1) COPD with emphysema;
- (2) Arthralgias;
- (3) Chest pain with mild coronary artery disease;
- (4) Depression;
- (5) Hyperlipidemia;
- (6) Peptic ulcer disease.

- (b) An April 11, 2008 PhD mental status exam was reviewed.

The PhD psychologist reported the following complaints and symptoms: arthritis, emphysema, angina, and depression.

The PhD psychologist provided the following diagnostic analysis:

AXIS I--Major depressive disorder; recurrent and mild. History of alcohol dependence (remission).

AXIS V--58.

(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. The consultative psychological examination provided a diagnosis of major depressive disorder and history of alcohol dependence/remission. The AXIS V diagnosis [REDACTED]. Claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity. The PhD psychologist did not report that claimant is totally unable to work.

(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 consultative internal medicine evaluation shows the following diagnoses: COPD with emphysema; arthralgias; chest pain with mild coronary artery disease; depression; hyperlipidemia and peptic ulcer disease. The consulting internist did not report 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 capacity to perform unskilled light work.

Based on claimant's vocational profile (younger individual, 12th grade education and history of unskilled work), the department denied MA-P based on Med-Voc Rule 202.20. SDA

was denied based on claimant's failure to establish that he has an impairment which makes him totally unable to work for at least 90 days.

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).

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 (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 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, has existed for 12 months, and totally prevents all current work activities. 20 CFR 416.909.

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

Since the severity/duration requirement is *de minimus*, 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. Claimant previously worked on an assembly line making roofing trusses. This work was medium work.

The medical evidence of record establishes that claimant has major depressive disorder, recurrent/mild and a history of alcohol dependence. The medical record also shows breathing

dysfunction. The medical evidence shows that claimant has some difficulty breathing, but this impairment does not totally preclude all work activity.

Since claimant has significant breathing dysfunction, he is not able to perform medium work and is not able to return to his previous job as a wooden roof truss builder.

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

First, claimant alleges disability based on major depression. The psychological reports in the record show a diagnosis of major depressive disorder, recurrent/mild, and a history of alcohol dependence. A PhD psychological report provides a diagnosis of major depressive disorder, recurrent/mild and a history of alcohol dependence. Claimant's AXIS V/GAF score is 58 (moderate). The PhD psychologist did not state unequivocally that claimant is totally unable to work based on his depression. Furthermore, claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on emphysema, arthritis, angina and peptic ulcer disease. The medical evidence of record establishes the following diagnoses: COPD with emphysema, arthralgias, chest pain with mild coronary artery disease, depression, hyperlipidemia and peptic ulcer disease. The consulting internist did not state that claimant is totally unable to work based on the combination of these conditions. Claimant's physical conditions do not, at this time, totally preclude all employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his mental impairments, in combination with his COPD with emphysema, arthralgias, chest pain with mild coronary artery disease, depression, hyperlipidemia and peptic ulcer disease. Claimant currently performs many activities of daily living and has an active social life [REDACTED] the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes the claimant is able to perform simple unskilled sedentary work (SGA). In this capacity, he is able to work as a ticket taker for a theater, as a parking lot attendant, as a [REDACTED] as a telemarketing representative.

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.

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

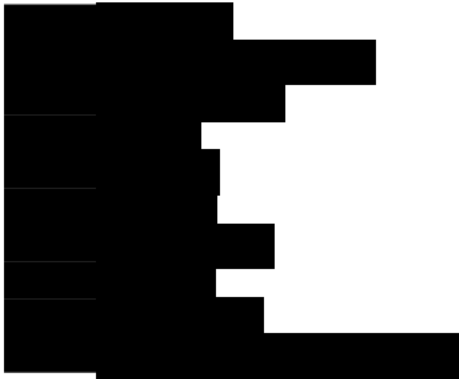
Date Signed: January 5, 2009

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/kgw

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