

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: 2007-10482
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 11, 2007
Kent 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 July 11, 2007 in Grand Rapids. Claimant personally appeared and testified under oath.

The department was represented by James Geisen (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. Claimant did not submit new medical evidence by record close date.

ISSUE

Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work on a sustained basis 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 (January 12, 2007) who was denied by SHRT (May 14, 2007) due to claimant's failure to establish an impairment which meets the severity and duration requirements.
- (2) Claimant's vocational factors are: age--24; education--high school diploma; post-high school education--none; work experience--machine operator and custodian.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since June 2007 when he worked as a machine operator.
- (4) Claimant has the following unable-to-work complaint: Short-term memory problems.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (May 14, 2007):

Psychiatric evidence of 7/11/2006 indicated claimant had no psychiatric history until May 30, when after smoking he was involved with the police and had an altercation with them. He was referred for treatment upon release from jail. He was found to have normal speech (with a heavy accent) that was coherent and logical. He had good eye contact. He admitted to hallucinations that have stopped since being on medication. His sleep and appetite were both good (page 7).

Mental status of 11/7/2006 indicated he had a full and appropriate affect. He was pleasant and cooperative with fair grooming and hygiene. He denied hallucinations or delusions (page 31).

ANALYSIS: Claimant is a young refugee from Sudan. He has been in this country since 2000. He reports being troubled by flash-backs to some of his Sudan experiences. However, he did not seek any treatment until he was referred after being arrested in 1/2006. Despite these flash-backs, he does well when he is compliant with medication and treatment.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant lives with a friend.

(7) Claimant has a valid driver's license and drives an automobile approximately twice a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] psychiatric report was reviewed. The psychiatrist provided the following history:

Claimant has been without medication for a few weeks. He denies that he has any unusual thinking. He denies voices, but he did not get it filled because he no longer has insurance and he couldn't afford the Cogentin and the Risperdal. That really was conveyed to me, so we didn't do anything by the phone. Today I did tell him that I would put him on generic medication and he was agreeable to that.

* * *

MENTAL STATUS: He presents as a tall, thin, [REDACTED] man. His affect is full and appropriate. He is pleasant and cooperative. His grooming and hygiene is fair. He is able to report in a very coherent way that he was not able to afford his medication and therefore he didn't take it. He continues to work at [REDACTED] doing laundry. He is always on his way to work and is back for his last appointment. When I was running behind he had to leave to be on time for work. He denies that he is having any trouble

on his job. He denies hallucinations or delusions. He denies suicidal or homicidal ideation.

ASSESSMENT/DIAGNOSIS: Schizoaffective disorder.

[No work limitations were noted.]

- (b) A July 11, 2006 psychiatric evaluation was reviewed. The psychiatrist provided the following history of illness:

Claimant reports that he is a refugee from [REDACTED] where he basically had to live as an outcast with several other children from the age of 5 until he was sent to the [REDACTED] by the [REDACTED] a few years ago. He reports that he has never had any mental health issues, but on May 30th he was smoking marijuana with his girlfriend. He drove off in his car and decided to stop on the railroad tracks. Apparently, the police came thinking he was suicidal. They attempted to restrain him and put handcuffs on him. The police report indicates he then tried to disarm one of the police officers so he has a charge for that as well.

* * *

MENTAL STATUS: He presents as a very tall, dark-skinned African man. His speech was heavily accented, but he is understandable. He comes across as very sincere. He has good eye contact. His speech is coherent and logical. He is able to describe both the visual and auditory hallucinations. He was somewhat relieved that they have stopped. He is willing to admit that may be due to the Risperdal and they stopped that and thus he is going to continue his medication. He reports his sleep is good. His appetite is good. His main concern is getting a job and he feels that he should have a job.

DIAGNOSIS: Axis I--Schizophreniform disorder, R/O drug induced, cannabis abuse. Axis V/GAF--50.

- (9) The probative medical evidence, standing alone, does not establish a mental condition which, by itself, is expected to prevent claimant from performing customary work functions for the required period of time. The psychiatrist provided the following diagnosis: Axis I--Schizophreniform disorder; rule out drug induced cannabis abuse. Axis V/GAF=50.

(10) The psychiatrist report, when taken in context with the medical record, does not establish a severe mental impairment that would totally preclude Substantial Gainful Activity.

Claimant believes that he is employable and wants to work.

(11) Claimant's most prominent complaint is hallucinations.

(12) Claimant has applied for federal disability benefits; his application was denied.

(13) Claimant's new medical evidence was submitted to SHRT. SHRT reviewed the new medical evidence and reaffirmed its prior denial of MA-P benefits.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant does not have significant mental limitations as long as he is compliant with his psychotropic medications. Assuming that claimant complies with his medication regimen, the department thinks that claimant has a normal Residual Functional Capacity.

As long as claimant is compliant with his medication, the department thinks that claimant is able to perform a wide range of normal work-related activities.

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 impairments meet the department's definition of disability for MA-P and SDA purposes. PEM 260 and 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, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

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

Therefore, claimant meets the Step 1 disability requirements.

STEP 2

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

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means the severe impairment is expected to last for 12 continuous months or result in death. SHRT found that claimant does not meet the severity and duration requirements, based on his recent psychiatric reports.

The Administrative Law Judge agrees for the following reasons:

First, claimant has normal mental/physical work abilities as long as he takes his psychotropic medication.

Second, claimant performs normal activities of daily living and drives a car on a regular basis.

Third, claimant has a robust social life.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his mental illness, which is primarily limited to July of 2006. Claimant currently performs many activities of daily living, drives an automobile and has an active social life. These activities suggest that claimant is currently able to perform Substantial Gainful Activity and has no significant work limitations.

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 and 261.

Claimant is not eligible for MA-P/SDA based on the sequential analysis at Step 2.

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 Marianne Udow, Director
Department of Human Services

Date Signed: September 29, 2009

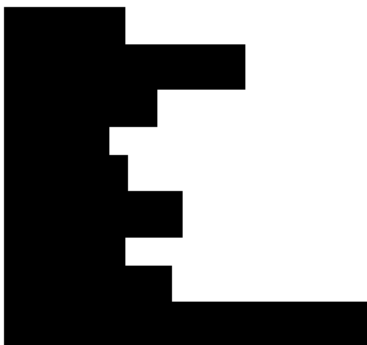
Date Mailed: September 30, 2009

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 mailing date of the rehearing decision.

JWS/cv

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