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: 2007-11557
Issue No: 2009; 4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
July 18, 2007
Grand Traverse 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 18, 2007 in Traverse City. Claimant personally appeared and testified under oath.

The department was represented by Colleen Ryan (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team on September 29, 2009. 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 made the final decision below.

ISSUES

(1) 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)?

(2) Did claimant establish a severe physical 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/retro/SDA applicant (January 12, 2007) who was denied by SHRT (June 22, 2007 and October 2, 2009) due to claimant's ability to perform medium work. SHRT cited Med-Voc Rule 203.28 as a guide. Claimant applied for retro MA for October, November, and December 2006.

(2) Claimant's vocational factors are: age--29; education--high school diploma; post-high school education--served for a short period of time in the ████, was discharged for medical reasons; work experience--press operator for 2 months, custodial and maintenance worker at ████████.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he worked as a press operator.

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

(a) Twitches in the neck and back;
(b) Spasms in the neck and back;
(c) Social phobia/does not like people;
(d) Doesn't like crowds;
(e) Obsessive tendencies.

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

<u>OBJECTIVE MEDICAL EVIDENCE (June 22, 2007):</u>

* * *

On February 6, 2007, claimant was alert and oriented x4. He did not appear overly anxious. He held his neck in a forward flexed position with the chin rotated toward the right shoulder. He was able to bring it back into midline, but with distraction, immediately returns toward the right, suggestive of a right lateral rotary torticollis (page 38). He did have slightly higher muscle tension in the right cervical paraspinous musculature, right strap musculature and left sternocleidomastoid. He had 5/5 strength in the bilateral upper and lower extremities. He did have a very minimal resting tremor. No intension tremor was seen. He was able to walk on heels and toes without difficulty. His gait was normal. He was mildly hyperreflexic and +3 at biceps, triceps and brachioradialis, patella and Achilles' bilaterally. There was no clonus at the ankles. He did have Hoffman's present in the bilateral upper extremities. He had an exaggerated reflex at the thumb and the doctor did see fasciculations in the abductor pollicis brevis (page 37).

A mental status exam, dated 12/11/2006 indicated claimant's appearance was meticulous. His motor status was rigid. His affect was blunted or flat and his mood was anxious and fearful. Thought content/process revealed blocking, paranoid ideation and preoccupation. His speech had stuttering. He could not make eye contact until the very end of the contact. He was very articulate when he spoke. His thought process was organized, but he also believes he 'knows what people are actually thinking' and he still 'believes someone was trying to kill' him in 10/2003. His diagnosis included social phobia, alcohol dependence, rule out schizotypal personality disorder and avoidant personality disorder (page 33).

A mental status dated 12/14/2006 showed his mood appeared tense and affect was restricted overall with minimal brightening. He demonstrated appropriate concern. There was no psychosis, paranoia or delusions. The thoughts were clear and logical and goal-directed. There were no abnormal movements or tremors or tardive dyskinesia (page 18).

> On 1/11/2007, claimant's mood was euthymic and his affect was slightly restricted with brightening. No psychosis. Thoughts were clear and logical and goal-directed. No abnormal movements or tremors (page 15).
>
> ANALYSIS: Claimant has a history of substance abuse. On several mental status exams, it was noted that there were no abnormal movements or tremors. On a physical exam in 2/2007, he had very minimal resting tremor but no intentional tremor. With treatment, claimant's mental status was improving. In 1/2007, his thoughts were clear, logical and goal-directed. There was no psychosis.
>
> * * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry, and some grocery shopping. Claimant lives alone in a hotel in [redacted].

(7) Claimant does not have a valid driver's license. Claimant is computer literate and enjoys computer games.

(8) The following medical records are persuasive:

(a) A February 26, 2007 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: anxiety, history of movement disorder. The physician reports not work limitations.

(b) A [redacted] report was reviewed.

The physician provided the following history: Chief complaint: "Twitches".

HISTORY OF PRESENT ILLNESS:

Claimant is a 29-year-old, right-handed gentleman who I am seeing in consultation at the request of [redacted] because of unexplained movement. He tells me that he first noticed difficulty with movement in his right hand between the ages of 10 and 12. It would manifest when he was trying to write and interfered with his ability to perform in school. Over his teenage years, this

began to increase and he began to have increasing trouble 'holding a pen.' He would have cramping in his hand when he tried to hold any object for a prolonged period of time. He also noticed in his teenage years that he began to have difficulty 'holding still.' He would have 'twitches' in his neck and back that would result in involuntary movement and sometimes he would also have twitching in his hand. He denies a history of large movement such as choreiform or hemiballismic type movements. He did finish high school. He enlisted in the [redacted] and was discharged on medical issues because of the tremor in his right hand that interfered with his ability to salute and stand still at attention.

He tells me that he began to use alcohol heavily in his 20s because it 'treated the symptoms.' Specifically, when he would get intoxicated he had very little to no movement issues. Sleeping pills and cough medication as well as marijuana tended to make his symptoms worse. Methamphetamine and cocaine did not have any impact on his symptoms. He was never given any type of prescription medication such as Inderal or Propanolol to treat his issues.

Currently, he has difficulty if he grabs on to an object. He has difficulty 'letting go.' He will have cramping in his right hand. He had some symptoms in his left hand recently, but nothing as severe as the right. He does have 'restless leg syndrome' which he describes as twitching and jumping of his legs when he tends to lie down and go to sleep and this has been present for 10 years. He has difficulty going out in public because he tends to 'jump' at noises. He notices over the last several years that he tends to hold his head down and toward the right which is quite bothersome for him and he feels quite self-conscious about this. He attributes this to developing some social anxieties which have resulted in him having difficulty with employment.

The neurologist provided the following impression:

(1) Movement disorder, undetermined;
(2) Anxiety disorder.

[No work limitations are noted.]

(c) A February 26, 2007 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: anxiety, history of movement disorder.

[The physician does not report any physical limitations that would prevent normal work activities.]

(d) A December 14, 2006 psychiatric evaluation was reviewed. The psychiatrist provides the following history:

Claimant states he has had an approximate 8-year history of anxiety, which occurs solely in the context of social situations, when he feels that he is the subject of scrutiny by others. He has symptoms consistent with panic attacks and states that these can occur when either he is with unfamiliar people or people he knows well, and states that he feels that 'everybody is looking at me.' He denied history of symptoms consistent with other anxiety disorders, and denies any history of depression, mania or psychoses.

He is sleeping 8 hours daily and denies any symptoms of depression and denies any history of suicidal ideation.

He reports having a 10-year history of alcohol and substance abuse problems. At age 15 years, he first consumed alcohol an began abusing alcohol at age 16, whereby he was consuming alcohol in favor of going to class during high school. His use escalated to the point where he experience tolerance and withdrawal and has created numerous legal difficulties; he has 2 OUIL's and has been incarcerated for a total of 5 years secondary to a charge of home invasion, second degree, from 1999. While on parole, he was unable to maintain sobriety, therefore was placed back in prison. He was significantly intoxicated with alcohol and cannabis at the time of the above offense and recalls little details of this specific charge. His longest period of sobriety is 2.5 months, which is presently active and he is doing this despite receiving no substance abuse treatment at the present time. Denies any urges or cravings to use. He states he has a strong aversion to alcohol, as he sought recent medical treatment in a local hospital for acute alcohol poisoning along with consumption of prescription narcotics. He also reports a past history of abusing OTC cold medicines, denies other drug use, though has used cannabis.

SOCIAL HISTORY:

He described his childhood as 'excellent' and grew up in [redacted]. He states he was active in athletics and church and denies any history of sexual or physical abuse. He was a successful student until the age of 16, when he began consuming alcohol and his grades thereafter were poor. He moved to [redacted] at age 16 years. He has worked in factories and states that because of his anxiety, he is unable to work secondarily due to need to interact with other people. He smokes 1/3 pack per day and states that caffeine makes him slightly 'jumpy'.

The psychiatrist provided the following assessment:

Axis I -- Social phobia, generalized; alcohol dependence, in early full remission.

Axis V/GAF -- 46.

(e) A [redacted] was reviewed. This assessment was done by an MSW.

The MSW provided the following history of presenting issues: Claimant reports a history of chronic alcohol abuse since age 16 when he was drinking 3 double shots a night just in order to have fun.

He was arrested for home invasion at age 20 and spent 2 years in prison, with a felony probation on his first offense. He was drunk when the offense occurred. He came out and immediately started using again, although he's only tried anything else once or twice. On October 3, 2006, he was taken to the [redacted] following days of taking Vicodin and Valium while drinking. He had become involved with a woman of age 42 who had all these drugs and gave them to him. She proposed during this time which he accepted. He thinks he almost died the night he went to the hospital, BAL of 3.8 (and believes that either his brother, or his father or this woman tried to kill him). This scared him enough to 'give up drinking and try to deal with the problem.' He has a history of panic attacks that precede going to jail, but he has trouble remembering age of onset. He described one time going out to eat at a restaurant with his parents. He saw someone looking at him from across the room, and first his hands tensed up and then he couldn't hold

> his fork or glass, and he started having the usual symptoms, but as the tension kept escalating, he started to cry, and then ran out of the building.
>
> WORK AND EMPLOYMENT:
>
> From 18-20 he worked in a canning factory and at [redacted] for 2.5 months. He was drinking a 1/5 or 3 jumbos while working and masking his breath with sugar, syrup, etc.
>
> He feels the only kind of job he would be comfortable in would be 'in a factory in a dirty corner, working alone.' This isn't what he wants, but he feels it's all he could do. In prison, he was a 'porter' and 'could just stare at the floor while he mopped', which helped him avoid people.
>
> The MSW provided the following mental status narrative: Claimant could not make eye contact until the very end of our contact. He was very articulate when he spoke and had significant memory problems, which he realizes is because he drank so much for so long that there are years that are blurred (which interfered with timelines, etc. He had to be prompted by his [redacted] worker to describe those problems which distress him most. He is painfully self-conscious, and anticipates a negative response from everyone. His thought process was organized, but he also believes he 'knows what people are actually thinking' and he 'still believes someone was trying to kill him' on October 3rd. His judgment is fair as is his insight, and he likely has above average intelligence.

* * *

(9) The probative medical evidence, standing alone, does not establish an acute 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 diagnoses: social phobia, alcohol dependence, in early full remission and Axis V/GAF--46. The psychiatrist did not report any significant work limitations. The psychiatrist's report, when taken in context with the medical evidence of record, does not establish a severe mental impairment that would totally preclude Substantial Gainful Activity.

(10) The probative medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The neurologist provided the following diagnoses: (1) Movement disorder, undetermined; (2) anxiety disorder. The neurologist did not report any work limitations. The medical record shows that claimant has no lifting restrictions and is able to sit, stand, and walk for at least 8 hours a day. Furthermore, he can use his hands, arms, and feet and legs normally. The medical records, when taken as a whole, do not establish a severe physical impairment that would totally preclude Substantial Gainful Activity.

(11) Claimant's most prominent complaint is his anxiety about being around people.

(12) Claimant has applied for federal disability benefits; his application was recently denied by the Social Security Administration.

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 has the Residual Functional Capacity (RFC) to perform medium work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The department thinks the medical evidence of record shows that claimant retains the capacity to perform simple, unskilled, medium work

Therefore, based on claimant's vocational profile (younger individual (age 29, 12th grade education and history of unskilled work), the department denied MA-P based on Med-Voc Rule 203.28 as a guide. The department denied SDA based on lack of severity and duration.

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 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 medical/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 meets the severity and duration requirements.

The Administrative Law Judge agrees.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege that he meets any of the Listings.

Therefore, the Administrative Law Judge concludes that claimant does not meet the Step 3 disability requirements.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a floor maintenance man for [redacted].

The medical evidence of record establishes that claimant is able to perform medium work. There are no functional work limitations reported in the medical evidence. Therefore, claimant can return to his previous work as a floor maintenance man.

Based on the medical evidence of record, claimant is able to perform his previous work as a floor maintenance man.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. 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.

The medical/vocational evidence of record establishes that claimant is able to perform medium work. Claimant's vocational profile shows a younger individual (age 29) with a high school education and a history of unskilled work as a floor maintenance worker. The medical/vocational evidence of record, when taken as a whole, shows that claimant is able to perform Substantial Gainful Activity. The medical record substantiates that claimant is able to work as a grocery store carryout assistant, security guard, ticket taker for a theatre, or as a parking lot attendant.

During the hearing, claimant testified that the major impediment to his return to work was his desire to avoid people.

This impairment, alone, is insufficient to establish disability.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his social anxiety. Claimant currently performs many activities of daily living and is computer literate. The medical/vocational record as a whole shows that claimant has the ability to perform Substantial Gainful Activity.

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 above sequential analysis at Step 5.

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: October 12, 2009

Date Mailed: October 13, 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

cc: