

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: 2007-12648
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 14, 2007
Gladwin 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 June 14, 2007 in Gladwin. Claimant personally appeared and testified under oath.

The department was represented by Lucinda Hyatt (ES).

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 June 22, 2007.

Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. SHRT issued a second disability denial.

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 (October 12, 2006) 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--34; education--high school diploma; post-high school education-- studies in corporate finance at [REDACTED]; work experience --in-house carpenter (rough and finish), manager of pizza store, bank supervisor, sporting goods store clerk and bank teller.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since May 2006 when he worked as an in-house carpenter.

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

- (a) Bipolar disorder;
- (b) Major depression;
- (c) Side effects from psychotropic medications;
- (d) Sleep dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (May 14, 2007):

Claimant was in outpatient treatment with [REDACTED] in 10/2006 for major depression. (Pages 25-35) According to a 10/2007 consultative exam, his memory was intact and his mental status examination was normal. He was diagnosed with major depression/bipolar disorder. (Page 17-15)

ANALYSIS: The objective medical evidence presented does not establish a disabling mental or physical impairment that would preclude basic work activity.

* * *

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

(7) Claimant has a valid driver's license and drives an automobile approximately 6 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A January 11, 2007 psychological evaluation was reviewed. The Ph.D. psychologist provided the following observations:

People with this profile report suicidal ideation, and often have previous inpatient hospitalizations for actual attempts. This is because he tends to focus on his failures, constantly analyzing his weaknesses and vulnerabilities, anticipating future failure and abandonment. Suicide potential needs to be carefully evaluated and monitored. At present he is at a very low risk for self-harm behavior.

He is experiencing great concern over his physical functioning, expressing complaints, exhibiting physical symptoms, when usually there is no demonstrable organic pathology. When real physical problems exist, he will exaggerate their severity. His numerous somatic complaints will focus on his pain, fatigue, weakness, along with dizziness, irritability and depression.

Physical tensions and anxiety are also prominent. He is restless and prone to worry about many things. He is dependent and immature yet also hard-working and driven. He is conflicted about assuming responsibilities but tends to do so, in a whining and complaining manner. He has continuing doubts about his own abilities and tends to be indecisive. The use of repression and denial to cope with emotional problems is characteristic as he lacks insight and resists indications that his physical symptoms are related to emotional causes or conflicts.

* * *

He will respond well to medications such as anti-depressants, but is also vulnerable to developing dependency upon medication.

Traditional psychotherapy tends not to work well with him because he has learned to live with and use his complaints for secondary gains, and, can tolerate high levels of discomfort before becoming motivated to change. His depression is of the restless, anxiety, agitated depression, such that he is more complaining and pessimistic than lethargic and vegetative. Although he may show good responses in the short term, symptoms are likely to return.

The Ph.D. psychologist provided the following DSM diagnoses:

Axis I--Bipolar II disorder; major depression, recurrent, moderate severity, without psychotic features.

Axis V/GAF--55-65.

- (b) A January 11, 2007 Mental Residual Functional Capacity Assessment (DHS-49E) was reviewed. The Ph.D. psychologist found that all areas of review were not significantly limited.

(9) The probative medical evidence, standing alone, does not establish an acute psychiatric/psychological condition expected to prevent claimant from performing customary work functions for the required period of time. The psychologist provided the following diagnoses: Bipolar II disorder, major depression. The psychological 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) Claimant's most prominent complaint is his bipolar disorder in combination with depression.

(11) Claimant has applied for federal disability benefits; his application is currently pending before 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. The medical records provided by claimant verify the following diagnoses: bipolar II disorder and major depression recurrent, moderate severity, without psychotic features.

DEPARTMENT'S POSITION

The department thinks that the medical evidence of record does not document a mental/physical impairment that significantly limits claimant's ability to perform basic work activities.

The department denied MA-P and SDA due to 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 impairments meet the department's definition of disability for MA-P/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/medical evidence of record shows that claimant is not currently performing SGA.

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. 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 rough and finish carpenter.

The medical evidence of record establishes that claimant is able to perform normal work activities.

This means that claimant would be able to return to his work as a rough and finish carpenter.

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 normal work activities. Claimant's vocational profile shows a younger individual, with a high school education and three years of college and a history of skilled and unskilled work.

The medical evidence of record establishes that claimant would be able to return to work as a carpenter, which was his last 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.

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: July 27, 2009

Date Mailed: July 27, 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:

