

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: 2007-19366
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 10, 2007
Livingston 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 hearing was held in Howell on October 10, 2007. Claimant personally appeared and testified under oath.

The department was represented by Marsha Ringer (ES).

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 can be reviewed by SHRT. Claimant did not submit new evidence by the record close date.

ISSUES

(1) Did claimant establish severe mental impairment expected to preclude him from substantial gainful work on a sustained basis for one year (MA-P) or 90 days for 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 (October 4, 2006) it was denied by SHRT (September 11, 2007) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age—29; education—high school diploma; post-high school education, has an associate's degree in communication; work experience—worked as a truck driver for a junkyard and did maintenance (indoor), and worked for an apartment complex.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked for a junkyard in January 2006.

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

- (a) Anger issues;
- (b) Anxiety;
- (c) Short-term memory problems;
- (d) Back goes out;
- (e) Memory and concentration problems;
- (f) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (September 11, 2007):

A psychological evaluation, dated May 22, 2007, stated claimant had a history of brain injury (while trying to establish a business). He was well organized in his presentation. He hears his name. He hears the phone ring but he checks, there is no one calling. He was mildly depressed, friendly, outgoing, but had somewhat quiet affect. He self medicates with marijuana. His diagnosis included cognitive disorder due to head trauma (mild), marijuana dependence.

ANALYSIS:

Recent psychological testing indicated claimant had a mild cognitive disorder due to a head trauma. He also had marijuana dependence. He was mildly depressed and his affect was somewhat flat.

* * *

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

(7) Claimant has a valid drivers' license and drives an automobile approximately 12 times a month. Claimant is computer literate. Claimant has an Associate's degree in communication.

(8) The following medical records are persuasive: (a) a May 22, 2007 psychological evaluation was reviewed. The Ph.D. psychologist provided the following history:

Claimant was most recently employed in January 2006. He worked as a parts puller in a junkyard. He says that he was unable to perform the duties of this job and was switched to a shipping position. Again, he made numerous errors, and was transferred to a position as loading driver. He states that his position changed several times until the facility finally shut down after approximately one year from employment. He had to work at a nursing home through direct environmental services. He returned to the junkyard where he worked for a few months.

PERSONAL HISTORY:

* * *

Claimant has two [REDACTED], one in [REDACTED] [REDACTED] and one in [REDACTED]. He attained these degrees at [REDACTED]. Over the years, however, he has worked primarily in entry level and general labor types of employment.

Claimant reports that his girlfriend and he are trying to establish a cleaning company. They do have some connections through real estate brokers, and his girlfriend. He says that he tries to help out but mainly just gets in the way.

Claimant was involved in a motor vehicle accident in 1994 (page 17). He reports that he was in and out of consciousness for several months, but primarily was treated as outpatient during this time. He was involved in brain rehabilitation in Lansing through a company called [REDACTED] (1995). There, he underwent a full range of rehabilitation services including occupational therapy, physical therapy.

The Ph.D. psychologist provided the following diagnosis:

Axis I—cognitive disorder, due to head (mild); marijuana dependence; adjustment disorder, depressed mood.

Axis V—GAF—60.

* * *

(9) The prohibitive medical evidence does not establish an acute mental condition expected to prevent claimant from performing all types of manual work functions for the required period of time. The mental records do show that claimant has the following diagnosis: Cognitive disorder, marijuana dependence and adjustment disorder.

(10) The prohibitive medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do not show any severe physical impairment at this time.

(11) Claimant's most prominent complaint is headaches and memory dysfunction.

(12) Claimant has applied for federal disability benefits with the Social Security Administration. His application is still pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks that he is eligible for retro/SDA 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 MA-P and SDA application due to claimant's failure to establish an impairment which meets the department's requirements for 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 Family Independence Agency 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 does 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 consideration of all factors in each particular case.

STEP #1

The issue at Step 1 is whether claimant is performing substantial gainful activity (SGA). The claimant is working and 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 and performing substantial gainful activity (SGA) are not disabled regardless of medical condition, age, education and work experience. 20 CFR 416.920(b).

The Medical/Vocational evidence shows that claimant is not currently performing SGA.

Claimant meets Step 1 disability requirements.

STEP #2

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

Unless an impairment is expected to result in death, he must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

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

If claimant does not have an impairment or combination of impairments which provide a limited disability to do basic work activities, claimant does not meet the Step 2 criteria.

The medical evidence of record does not establish an impairment which meets the severity and duration requirements.

Claimant does not meet the Step 2 requirements.

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.

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 at a parts store and junkyard as well as a truck driver.

Claimant's work as a parts sorter may be defined as follows:

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The medical/vocational evidence of record shows that claimant has no restrictions on his ability to lift and perform other work functions.

Therefore, claimant is able to return to his previous job as a parts sorter for the junkyard.

Claimant does not meet the Step 4 disability requirements.

STEP #5

The issue at Step 5 is whether claimant has the residual functional capacity (RFC) to do other work.

The purposes of this analysis, to be classify job as sedentary, light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED] [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole establishes that claimant is able to do normal work activities. Claimant's vocational profile is that of a younger individual (age 29) with a high school diploma and two [REDACTED]. Claimant is a skilled computer operator. Based on this analysis, claimant is able to perform normal work activities, including a bagger at a grocery store, a ticket taker for a theater, parking lot attendant or as a greeter for [REDACTED]. Claimant does not qualify for MA-P/SDA benefits under Steps 2, 3, 4, and 5 of the sequential analysis procedure.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides decides that the 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: August 10, 2009

Date Mailed: August 11, 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/tg

cc:

