

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: 2007-10841
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 18, 2007
Lapeer 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, an in-person hearing was held in Lapeer on December 18, 2007. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED] from [REDACTED].

The department was represented by Pat Bentley (FIM).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT.

Claimant did not submit new medicals by Record Close Date.

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/retro/SDA applicant (September 25, 2006) who was denied by SHRT (August 13, 2007) due to claimant's ability to perform medium work. SHRT relied on Med-Voc Rule 203.25 as a guide. Claimant requests retro MA for June, July and August 2006.

(2) Claimant's vocational factors are: age--34; education--9th grade, post-high school education--none; work experience--worked as a clean up laborer at construction sites, well driller/rigger assistant, and food prep cook at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a construction site clean up laborer in 2006.

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

- (a) Right knee meniscus removed surgically;
- (b) Bursitis in right elbow;
- (c) Doesn't like crowds;
- (d) Loses temper easily;
- (e) Obsessive compulsive disease.

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

OBJECTIVE MEDICAL EVIDENCE (August 13, 2007)

Claimant was admitted in 6/2006 due to a drug overdose and alcohol. He reportedly had a prior suicide attempt at around age 16. He has a history of heavy alcohol use. His diagnosis included bi-polar I disorder, mixed and alcohol dependence (page 44).

On exam 1/31/2007, claimant was 189 pounds. His right knee revealed a small suprapatellar joint effusion. No erythema. No crepitus could be appreciated on exam. The anterior and posterior drawer signs were negative. There were no motor or sensory deficits appreciated in either leg. Homan's sign was negative bilaterally. Pulses were +2 bilaterally in both the lower extremities. He had good range of motion (ROM) in both knees.

He was able to walk on his heels and toes without any difficulty (page 15). X-rays of the right knee were unremarkable (page 16).

A psychological evaluation, dated 2/1/2007, showed claimant was casually dressed. He exhibited hyperactive, automatic movements in his extremities. His speech was slow and calculated. His affect was mildly depressed and blunted. He reported seeing dark shadows at night which caused him much fear and anxiety. No auditory hallucinations were noted or reported. His estimated level of intelligence was average overall, with above average artistic ability and below average mathematic skills. His ability to maintain a normal conversation was dependent on his mood. He was suspicious, irritable, socially isolated and hypervigilant. He maintained appropriate level of eye contact. He was able to complete the intake paperwork, quickly, efficiently and completely himself. He appeared alert and awake and he was motivated to participate. His affect was mildly blunted, however, he appeared capable of establishing (page 13) therapeutic rapport. The doctor indicated that claimant's problems were chronic and severe although his ability to work may not be severely impaired as long as the job does not involve any appreciable amount of contact with people (page 14). His diagnosis included bi-polar II, post-traumatic stress disorder (PTSD) and alcohol abuse (page 13).

Claimant was admitted again in 4/2007 due to depression and suicidal ideation. The claimant's blood alcohol level in the ER was 2.33. On exam, he was 5' 11" tall and 178 pounds. His blood pressure was 114/66. His chest was clear. The abdomen was soft without any masses or tenderness palpable. The extremities revealed no peripheral edema. Peripheral pulses were bilaterally equal and normal. Deep tendon reflexes were bilaterally equal and normal. Babinski was equal bilaterally. There was no gross motor or sensory deficits (Medical submitted by rep and pages not numbered).

On 4/17/2007, claimant's behavior was within normal limits. His appearance was disheveled. His mood and affect were appropriate. Thought content was within normal limits and there were no hallucinations. His mental status was noted to be within normal limits. ED physician notes--page not numbered.

A psychological evaluation, dated 6/18/2007, showed claimant's gait and stance were appropriate. Grooming was appropriate. He spoke spontaneously. Speech was syntactically correct and clear. Thought processes were logically connected. There were not signs of delusions or thought disorder. Affect was appropriate and mood

euthymic. Affect was appropriate to mood, his diagnosis included history of bi-polar disorder, PTSD, alcohol abuse and anti-social personality disorder (New Information).

ANALYSIS: Claimant has a long history of alcohol abuse and records indicated continued use of alcohol. His most recent mental status exam showed he was spontaneous and thought processes were logically connected. Claimant reported problems with his hands and knees. On exam, his knee had some small effusion, but no other abnormal findings. X-rays were unremarkable. In 4/2007, his extremities showed no gross motor sensory deficits. Claimant would be capable of simple, unskilled work.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant lives alone. Claimant does not use a cane, walker, wheelchair or shower stool.

(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:

See SHRT medical records summary presented in paragraph #5 above.

(9) The probative medical 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 psychological/psychiatric records show the following diagnosis: bi-polar I disorder, mixed and alcohol dependence. Claimant's GAF score is 55.

(10) The probative medical evidence does not establish an acute (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records do show that claimant has the following exertional impairments: right knee dysfunction.

(11) Claimant has 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 based on the following hearing summary supplied by [REDACTED]

* * *

Claimant is a thirty-three (33) year old male who has a 9th grade education and real problems reading and writing and a work history of a carpenter, well rigger, and window installer. He has the following health issues: bipolar, suicidal ideation and at least 2-3 attempts, depression, arthritis in both hands and feet and GERD.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform a wide range of unskilled medium work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The department denied claimant's MA-P application based on claimant's vocational profile [younger individual (age 34) with a 9th grade education and a history of semi-skilled work as a well rigger's assistant and carpenter]. The department's MA-P denial was based on Med-Voc Rule 203.25, as a guide.

The department denied SDA based on PEM 261 because the nature and severity of the claimant's impairments do not preclude a wide range of unskilled medium work for 90 days or more.

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. Claimants who are working and performing Substantial Gainful Activity (SGA) are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

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.

Unless an impairment is expected to result in death, it 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 satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 disability criteria.

SHRT found that claimant meets the severity and duration requirements.

Therefore, claimant meets the Step 2 disability 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.

Therefore, 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 construction site clean up laborer. This was medium work, which is defined as:

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

The medical evidence of record does not establish that claimant is totally unable to perform medium work. While it is true that claimant has some problems with the meniscus in his right knee and some bursitis in his right elbow, these conditions do not totally preclude claimant from returning to his previous work as a construction site laborer.

Therefore, 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.

Claimant has the burden of proof to show by the medical evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant primarily alleges disability based on his mental impairments (loses temper easily, obsessive compulsive disorder, and doesn't like crowds of people). Evidence of

claimant's mental impairments does not show that these impairments significantly detract from claimant's ability to work. Claimant did not submit a DHS-49D or a DHS-49E to establish exactly what his mental residual functional capacity currently is. The Ph.D. psychological report (February 2007) provided the following diagnosis: bi-polar I, post-traumatic stress disorder and alcohol abuse. The Ph.D. psychologist gave claimant an Axis V/GAF score of 55. The Ph.D. psychologist did not rule out unskilled medium work.

Second, claimant thinks he is disabled based on his physical impairments (right knee dysfunction, bursitis in the right elbow and GERD). The medical evidence does not establish that claimant's exertional limitations would totally preclude him from performing his previous work as a construction site clean up person.

In addition, the medical/vocational evidence shows that claimant is able to perform light/sedentary work. This would include employment as a ticket taker for a theatre, as a parking lot attendant, or as a greeter for [REDACTED]. Claimant could also work as a security guard. Based on this analysis of claimant's non-exertional and exertional impairments, the department correctly denied claimant's MA-P/SDA application.

Claimant does not qualify for MA-P/SDA disability benefits under Step 5 of the sequential analysis procedure. Furthermore, he does not qualify for benefits under Med-Voc Rule 203.25, as a guide.

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: August 24, 2009

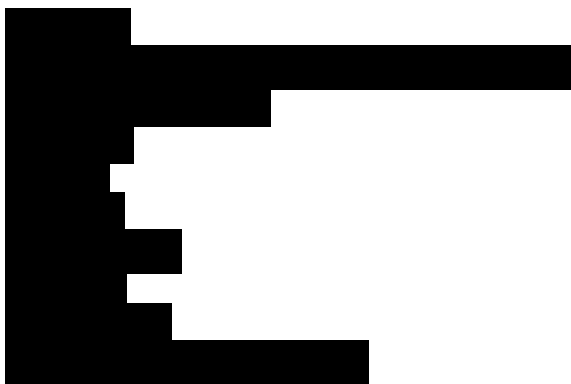
Date Mailed: August 25, 2009

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:

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