

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: 2007-15632
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 20, 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 in Grand Rapids on September 20, 2007. Claimant personally appeared and testified under oath.

The department was represented by Stuart Wright (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 that his new medical evidence could be reviewed by SHRT. Claimant did not submit new medical evidence by the record close date.

ISSUE

(1) Did claimant establish a severe mental impairment to preclude him from substantial work continuously for one year (MA-P) or 90 days (SDA)?

(2) Did claimant establish a severe physical impairment to preclude him from substantial 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 (January 7, 2007) who was denied by SHRT (July 19, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for October, November and December 2006.

(2) Claimant's vocational factors are: age--39; education—12 th grade; post-high school education—none; work experience—short-haul truck driver, welder for a die cast company and machine die cutter operator.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he was a short-haul truck driver in 2006. Claimant was injured in an accident in 2006.

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

- (a) Bipolar disorder;
- (b) Degenerative disc disease (back);
- (c) Spinal stenosis;
- (d) Status post motor cycle accident (June 2006).

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

OBJECTIVE MEDICAL EVIDENCE (JULY 19, 2007):

In 6/2006, claimant was involved in a motorcycle accident. He was intoxicated and sustained a fractured scapula and pelvis. His injuries were treated surgically and he received therapy while in rehabilitation (mental and physical) (Pages 72-98).

According to a 4/2007 consultative examination, he was 70" tall and weighed 150 pounds. His lungs were clear. Gait was normal. Blood pressure was normal. He had mild limitations of motion of his back with full range of motion of his hips, knees and shoulders. He did not exhibit any neurological deficits. His speech was normal.

According to a 3/2007 psychological consultative exam, he has a history of alcohol abuse. His mental status examination was normal. His memory was intact. He was diagnosed with poly-substance abuse, alcohol abuse and mild cognitive disorder.

ANALYSIS: The objective medical evidence presented does not establish a disabling mental or physical impairment that would preclude basic work activity. His injuries have healed adequately with minimal residuals. His primary mental problem is substance abuse.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking (sometimes), dish washing and light cleaning.

(7) Claimant does not have a valid driver's license and does not drive an automobile on a regular basis. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] history and physical was reviewed.

The physician provides the following history:

The patient is a 37-year-old, right-handed Caucasian gentleman with a history of bipolar syndrome, alcohol abuse and two previous suicide attempts in the past, who was a questionably helmeted motorcycle rider who was intoxicated. He hit a parked car on 6/20/2006. There was a loss of consciousness. Initial Blasco Coma Scale score was 15. He was brought to [REDACTED] and CT of the brain showed a left basoganglian hemorrhage. He was cleared by neurosurgery and was allowed to be placed on low molecular weight heparin for DVT prophylaxis. He also was found to have a T3 spinus process fracture, a cervical strain injury, a pelvic ring

fracture, bilateral scapular fractures, and left pneumothorax treated with left chest tube. He was treated conservatively with multiple lacerations requiring repair, including head and elbow. He was placed in a long Miami-J collar with an extension. He was placed toe-touch weight bearing on the right lower extremity. He was followed by [REDACTED] for ortho-spine, [REDACTED] for plastic surgery, [REDACTED] for pelvic and scapular fracture. He was weight bearing as tolerated to bilateral upper extremity. [REDACTED] was consulted for psychiatry, who recommended continuing the Wellbutrin and close psychiatric management. He was found not to be actively suicidal at [REDACTED]. He did have some mild alcohol withdrawals and needed Valium. He does have a long history of narcotic and substance abuse, so recommendations were for pain management within reason with careful attention to opioids.

The physician provided the following impression:

- (1) Status post closed head injury secondary to motorcycle versus car accident on 2/20/2006.
- (2) Status post T3 spinal process fracture with cervical strain injury treated conservatively with a Miami-J collar with long extension.
- (3) Status post pelvic ring fracture.
- (4) Status post bilateral scapular fracture.
- (5) Status post pneumothorax fracture with left chest tube.
- (6) Pre-morbid history of alcohol abuse with bipolar syndrome with previous suicidal attempts.

(b) A [REDACTED] physician Discharge Summary was reviewed. The physician provided the following discharge diagnoses:

- (1) Closed head injury secondary to a motorcycle vs. car accident on June 20, 2006.
- (2) T3 spinus process fracture with cervical sprain injury;

- (3) Pelvic ring fracture;
- (4) Status post bilateral scapular fracture;
- (5) Status post pneumothorax;
- (6) Premorbid history of alcohol abuse with bipolar syndrome.
- (7) History of narcotic abuse in the past.

The physician provided the following Functional Status Report:

The patient was able to follow his toe-touch weight bearing by the end of discharge. He was ambulating 200 feet. He just needed supervision for safety and impulsivity and independent with ADL's with supervision and set-up.

- (c) A [REDACTED] Outpatient Psychology Discharge summary was reviewed.

The PhD psychologist provided the following background:

Claimant is a 37 year old right handed Caucasian man with 12 years of education. He was the questionable helmeted driver in a motorcycle accident on June 20, 2006. He was intoxicated at the time of the accident. He had a history of bipolar disorder, alcohol abuse, and illicit drug use. During his in-patient stay, there was an increase in agitation on bipolar symptoms (delusional, confabulatory, agitation). I met with both he and his mother-in-law, he was at in-patient at [REDACTED] from June 28 through July 11, 2006.

After his discharge, I met with him for one additional session as an outpatient. Unfortunately, he cancelled his second appointment and did not reschedule.

- (d) An [REDACTED] Assessment was reviewed.

The physician provided the following chief complaints:

Brain trauma, bipolar disorder, leg, back and shoulder problems.

The patient states that he was riding a motorcycle without a helmet on June 2006. He was going down a one lane street. He states that he tried to avoid a car behind him and he “goosed it.” He ended up flipping over a pick-up truck and smashing into a telephone pole or tree and hit his head on a curb. He ended up with a closed head injury. Since that time, his left hip has been bothering him and his right shoulder clicks. He states that he can walk 30 yards and can stand for about 15 minutes. He was transferred to [REDACTED] where he was diagnosed with a closed-head injury, pelvic fracture, facial fractures, left pneumothorax and T3 spinus-process fracture. There were no surgeries performed. He currently lives in a trailer with his mother. He is independent in all activities of daily living. He does not use a cane. He states that he would like to have medication for pain, but cannot afford them at this time. He used to be employed as a truck driver and he enjoys fishing and model cars.

The internist provided the following conclusions:

Motorcycle accident: He sustained a closed-head injury, T3 spinus-process fracture, pelvic fracture, left pneumothorax and facial fractures. On examination today, he did have diminished range of motion the right shoulder with apprehension and impingement signs being mildly positive producing a mild amount of pain. He was able to do fine manipulative tasks without difficulty. The left hip range of motion was significantly diminished. He declined to squat, but had no problem walking heel and toe or getting on or off the exam table. His gait was normal. A trial of physical therapy to try to increase his range of motion would be of benefit.

- (e) A March 23, 2007 PhD psychologist consultative exam report was reviewed.

The PhD psychologist provided the following history:

Claimant arrived on time for the appointment. He came with his mother. He said he had a motor vehicle accident in the summer. He was run off the road on a motorcycle. "I went flying through the air and I don't remember the accident." He said he has had trouble remembering things. "I can't remember that far back." He said something goes wrong with his leg and "I fall on the ground." He said he has shoulder problems and some mobility issues. He feels "I am tired. Tired of not being able to do things I used to do."

His mother said he has been living with her, but he sees his girlfriend. She said he has been kicked out of his girlfriends house and said "She is a bad influence on him." His mother said he has a history of drug and alcohol problems. She has taken him to a drug and alcohol program in recent weeks, but he has missed appointments. She suspects he has been drinking and possibly using drugs. She said his father killed himself and had a history of severe alcoholism. She indicated that she had been disabled from a stroke.

A medical note from 2006 indicates he was sleeping well and mentally was doing better. Additionally, blood in his urine, his motor vehicle accident and his closed head injury with intercerebral hemorrhage and multiple fractures were indicated. He was quite disoriented at the time surrounding his accident. Another note indicates his ongoing alcohol abuse, drug abuse and mood instability. It was reported that he also had multiple ER visits for pain medication.

The psychologist provided the following diagnoses;

Axis I—Alcohol abuse, poly-substance abuse, cognitive disorder NOS, rule-out substance induced mood disorder.

Axis V—50

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions. A recent psychological report provides the following diagnoses: Axis I—Alcohol abuse, poly-substance abuse, cognitive disorder NOS, rule-out substance induced mood disorder. Axis V/GAF—50.

Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional activity.

(10) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records show the following physical diagnoses: Motor vehicle accident—closed head injury, T3 spinousprocess fracture, pelvic fracture, left pneumothorax and facial fractures. The consulting physicians do not state that claimant is totally unable to work.

(11) Claimant's most prominent complaints is his bipolar disorder and degenerative disc disease in his back with pain.

(12) Claimant has applied for federal disability benefits. His application was denied. He did not appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant believes that if he was able to obtain competent medical care, he would possibly be able to return to work.

Claimant believes that the [REDACTED] is being totally unreasonable about the low level of assistance (FAP) that he is receiving since he has worked his entire life.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform basic work activities.

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

The department denied claimant's application for MA-P/SDA based on claimant's failure to establish an impairment which meets the severity and duration requirement.

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 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 physical/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.

Claimant's 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 result in death, it must have lasted or be expected to last for a continuous period of at least 12 month. 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 ability to do basic work activities, claimant does not meet the Step 2 criteria.

SHRT found that claimant does not meet the severity and duration requirements.

Therefore, claimant does not meet 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 a Listing.

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 short-haul truck driver. Claimant's work as a short-haul truck driver may be classified as light work. Claimant's work as a short-haul truck driver (light work) 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).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

The medical /vocational evidence of record establishes that claimant does not currently have a driver's license or a chauffeur's license, which is required in order to work a truck driver. Since claimant does not have the required driving credentials to drive a commercial vehicle, he is not able to return to his previous work as a short-haul truck driver.

Claimant meets 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.

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]. [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform sedentary/light work. Based on a careful analysis of claimant's exertional (physical) impairments, claimant is able to work as a grocery bagger carry-out clerk at a grocery store, as a ticker taker for a theatre, as a parking lot attendant or as a greeter for [REDACTED].

Based on this analysis of claimant's exertional impairments, the department correctly denied claimant's MA-P application based on his ability to perform substantial gainful activity.

Claimant also reports non-exertional (mental) impairments.

Claimant states that he is unable to work based on his bipolar dysfunction. The PhD psychologist who evaluated claimant provided the following DSM diagnoses: Axis I—Alcohol abuse, poly-substance abuse, cognitive disorder NOS, rule-out substance induced mood disorder. Axis V/GAF—50. There is no clinical evidence in the PhD psychologist's report to establish

that claimant is totally unable to perform sedentary/light activities. The PhD psychologist does recommend that claimant receive [REDACTED] therapy.

Based on claimant's non-exertional (mental impairments) claimant does not qualify for MA-P disability benefits under Step 5 of the sequential analysis procedure.

Finally, the record indicates that claimant has a history of drug and alcohol abuse. Claimant's drug and alcohol abuse is material to his bipolar condition. For this reason, claimant is not eligible for MA-P/SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet the MA-P/SDA disability requirements under PEM 260 and 261. Claimant is not disabled for MA-P/SDA purposes based on Steps 5 of the sequential analysis procedure and on claimant's history of drug and alcohol abuse.

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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JWS/sd

cc:

