

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: 2008-14928
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 3, 2008
Marquette 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 3, 2008 in Marquette. Claimant personally appeared and testified under oath.

The department was represented by Dale Schneider (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on July 11, 2008. 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, **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/SDA applicant (December 17, 2007) who was denied by SHRT (May 6, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age—43; education—high school diploma; post-high school education—a degree in electronic engineering from the [REDACTED]; work experience—cashier at the [REDACTED] baseball park, cigar salesman, hotel booking agent.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he was a cashier for the [REDACTED] baseball team in 2006.

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

- (a) "Muscle disease";
- (b) Fibromyalgia;
- (c) Neuropathy;
- (d) Arthritis;
- (e) Bipolar disorder'
- (f) Chronic pain syndrome
- (g) Diabetes;
- (h) Restless leg syndrome;
- (i) Diffuse body pain;
- (j) No feeling in arms or legs.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 6, 2008):

X-rays of the shoulder and elbow were normal (page 62).

Treatment note of 1/16/2008 indicated claimant was seen as a result of a fall on the ice. He appeared obese, comfortable, and in no distress. He was alert with intact thought processes and good hygiene and grooming. He did not appear manic or depressed. Physical examination was normal, with the exception of tenderness of the elbow and shoulder on the right (page 58).

ANALYSIS:

The evidence in the file does not demonstrate a severe physical or mental impairment. Medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), cooking (sometimes), dishwashing, laundry (needs help), grocery shopping (needs help). Claimant uses a cane on a daily basis. He does not use a walker, wheelchair or shower stool. He does not wear a brace on his neck, arms or legs. Claimant was hospitalized in the psychiatric unit in [REDACTED] for one night in September 2007 (diagnosis—bipolar disorder).

- (7) Claimant has a valid driver's license but does not drive. Claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) SHRT summary of the medical evidence is provided at 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. There are no psychiatrist or PhD psychologist reports in the record.

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

(10) The probative medical evidence of record does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The recent medical evidence of record shows the following diagnoses: obesity.

(11) Claimant's most prominent complaint is his fibromyalgia/body pain in combination with his bipolar disorder.

(12) Claimant recently applied for Social Security benefits. The Social Security Administration 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 impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC) and is able to perform usual work activities.

The department thinks claimant's medical evidence of record shows that he is able to perform basic work activities.

The department denied claimant's MA-P based on lack of severity and duration.

The department acknowledges that claimant's treating physician has given less than sedentary work restrictions, based on claimant's physical/mental impairments. However, the department thinks that claimant's [REDACTED] is inconsistent with the great weight of the objective medical evidence in the record. Based on 20 CFR 416.927(c) and 416.927(d), claimant's medical source opinion will not be given controlling weight.

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/SDA purposes. PEM 260/261. "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 evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability test.

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 medical condition which precludes substantial employment. Duration means that 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 for the following reasons:

First, although claimant does have a bipolar condition, the medical evidence does not establish that this condition has lasted in an acute form, for at least 12 continuous months.

Second, claimant reports that he is unable to work due to his multiple impairments including arthritis, chronic pain syndrome, diabetes and restless leg syndrome. The recent medical evidence provided at the hearing, does not show that claimant is totally unable to work based on his physical impairments.

Third, claimant alleges that he is unable to work based on his chronic body pain secondary to his arthritis and fibromyalgia. Evidence of pain, alone, is insufficient to establish disability for MA-P and SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his pain secondary to his arthritis and fibromyalgia. Claimant currently performs several Activities of Daily Living; has an active social life and is computer literate. The cumulative medical evidence shows that claimant is able to perform sedentary work (SGA). This means that claimant is able to perform unskilled, sedentary work which includes employment as a ticker taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

The department correctly denied claimant's MA-P/SDA applications based on Step 5 of the sequential analysis as presented above.

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 260/261.

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: 8/31/2009

Date Mailed: 8/31/2009

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

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