

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: 2008-18508
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 27, 2008
Barry 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 Hasting on August 27, 2008. Claimant personally appeared and testified under oath.

The department was represented by Susan Forman (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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 (February 26, 2008) who was denied by SHRT (June 10, 2008), due to claimant's ability to perform normal work activities. SHRT relied on Med-Voc Rule 203.20 as a guide. Claimant requests retro-MA for November, December 2007 and January 2008.

(2) Claimant's vocational factors are: age—24; education—high school diploma; post-high school education—none; work experience—cashier at a gas station, and parts inspector.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since January 2008 when he worked as a cashier for a gas station.

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

- (a) Schizoaffective disorder;
- (b) Depression;
- (c) Hears voices;
- (d) Sees hallucinations;
- (e) Suicidal thoughts;
- (f) Homicidal thoughts.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 10, 2008):

Claimant was admitted in 12/2007 due to a massive hemoptysis which ceased on its own. A CT scan of the chest revealed thrombosis of the right lower lobe pulmonary vein. A bronchoscopy demonstrated a blood clot in the right middle lobe and right lower lobe bronchus. Active bleeding was noted from the right lower lobe bronchus which resolved on its own. An echocardiogram showed a mild degree of mitral regurgitation and a mild degree of tricuspid regurgitation (page 30) and endocardic shunt defect, status-post repair, with tiny residual VSD (page 30). He remained hemodynamically stable (page 31).

Claimant was admitted in 12/2008 due to thoughts of suicide. He was thought to be suffering from acathisia and the risperdal was lowered. Other medications were adjusted. He reported a positive response to treatment. He was calm and denied being restless. He denied any psychosis or paranoia. Affect was euthymic. He had significant improvement (page 53).

On exam in 2/2008, claimant's lungs were clear. His cardiac exam was unremarkable. His exam was basically within normal limits (page 56).

ANALYSIS:

Claimant was admitted in 12/2007 due to a massive hemotysis, which resolved on its own. In 2/2008, his exam was basically unremarkable. He was admitted in 2/2008 due to thoughts of suicide and acathisia. Medications were adjusted and he made significant improvement.

(6) Claimant lives with his mother and father and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair, or a shower stool. He does not wear a brace on his neck or on his arms or legs. Claimant was hospitalized in January 2008 for schizoaffective disorder/thoughts of suicide. He was also hospitalized in February 2008 with the same diagnosis.

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

(8) The following medical/psychiatric records are persuasive:

(a) A [REDACTED] History and Physical was reviewed.

The psychiatrist provided the following history:

Claimant is a fair historian, and efforts were made to obtain additional information from the patient's mother who apparently was not available. This is a 23-year-old single,

white male with a high school education, currently unemployed, residing with his parents. This patient was seen with a chief complaint “thoughts of suicide, feeling down, thinking people were watching and following me.” This claimant, at time of admission, indicated that he was getting more restless.” Upon further explanation, claimant reported that he indeed has had restlessness, difficulty sitting still, and a constant drive to move. These symptoms seem to be suggestive of akithisia. He also acknowledges that these symptoms have contributed to him having thoughts of harming himself. In addition, he has some currently vague thought of harming others. He also describes that he thinks people may be watching him or following him. He denies hearing voices. In the past, he was employed as a cashier. He had difficulties tolerating that position, for he thought “people were out to get me,” and he also says, “people are watching.” In addition, claimant describes that he has been feeling depressed with decreased energy, feeling like crying, feeling some helpless and he has also acknowledged poor appetite and he has lost approximately 2 pounds. He has been treated at [REDACTED] [REDACTED] for his psychiatric symptoms. He reported he has difficulties tolerating Neurontin. He has been on Zyprexa for several days at [REDACTED]. I believe this was several weeks ago, and shortly prior to discharge, the Zyprexa was discontinued. The reason is not known to me, and he was placed on Risperdal 4 mgs. daily. He has, as noted, difficulties tolerating the Neuontin and that was discontinued.

The psychiatrist provided the following diagnoses:

Axis I—Schizoaffective disorder, past history of polysubstance abuse,

Axis V/GAF—28.

(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. Claimant testified that he hears voices and sees things like people and bugs. The History and Physical Report from [REDACTED] provided a diagnosis of

schizoaffective disorder with a past history of polysubstance abuse. Axis V/GAF assessment was 23 at the time of his admission. However, there are no psychiatric/psychological reports in the record. Also, claimant did not provide a DHS-49D or a DHS-49E to show his mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions for the required period of time. While it is true that claimant has been diagnosed with a massive hemoptysis, this was successfully treated in December 2007 and is no longer the basis for claimant's disability claim.

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

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 the ability to perform unskilled, light work.

The department thinks that claimant impairments do not meet/equal the intent of a Social Security Listing.

The department thinks that claimant retains the residual functional capacity to perform unskilled, light work. Claimant's past work was light (cashier).

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).

The department evaluates allegations of disability based on mental illness based on the following standards:

(a) **Activities of Daily Living.**

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) **Social Functioning.**

...**Social Functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, histories of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) **Concentration, Persistence and Pace.**

...**Concentration, Persistence or Pace** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

(d) **Sufficient Evidence.**

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical

evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) **Chronic Mental Impairments.**

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that her 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. Claimant's who are working, or otherwise 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 test.

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.

Claimant's impairments meet the severity and duration disability test.

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 test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a cashier for a gas station. This work was light work. There is no medical evidence in the record to establish that claimant could not return to his previous work. However, claimant testified that he currently hears voices and sees bugs and people which are not really there.

Based on claimant's current mental dysfunction he is not able to do the skilled work required of a cashier.

Claimant meets the Step 4 disability test.

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/psychological evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental disorder: schizoaffective disorder and depression. There is no psychological/psychiatric evidence in this record to establish that claimant's current mental illness totally precludes him from performing all substantial gainful activity. While it is true that claimant was hospitalized twice in 2008 for his schizoaffective disorder, it is being successfully treated with therapy and psychotropic medications at this time.

Second, claimant alleges disability based on mitral regurgitation.

This condition has been successfully treated and no longer prevents claimant from returning to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his mental impairment and his mitral regurgitation diagnoses. Claimant currently extensive Activities of Daily Living and has an active social life living with his parents.

Considering the entire medical record, in combination with claimant's testimony, the

Administrative Law Judge concludes that claimant is able to perform unskilled sedentary work

(SGA). In this capacity, claimant is able work 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 application 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: January 6, 2010

Date Mailed: January 6, 2010

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.

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