

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: 2008-26461
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 5, 2009
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 telephone hearing was held in Howell on February 5, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Kathy Carlson (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on February 5, 2009. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the 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 (June 12, 2008) who was denied by SHRT (August 18, 2008) based on claimant's failure to establish an impairment which meets the severity and duration requirements.
- (2) Claimant's vocational factors are: age--54; education--11th grade, post-high school education--completed an apprenticeship in commercial roofing; work experience--did assembly line and machine work for a temporary agency, worked as a commercial roofer (1970-2007).
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008, when he did factory work for a temp agency.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Has difficulty with his balance when walking;
 - (b) Has chronic panic attacks;
 - (c) Has anxiety attacks;
 - (d) Unable to process information readily.
- (5) SHRT evaluated claimant's medical evidence as follows: SHRT decided that claimant is able to perform normal, unskilled work activities. SHRT evaluated claimant's eligibility using SSI Listings 11.18, 5.05, 12.02, 12.04, 12.06, and 12.08.

(6) SHRT denied disability benefits because claimant is able to perform normal unskilled work activities.

(7) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, and laundry. Claimant needs help with grocery shopping. Claimant uses a cane approximately 27 times a month. He does not use a walker, a wheelchair or a shower stool. Claimant does not wear braces on his neck, back, arms or legs. Claimant did not received inpatient hospital services in 2008 or 2009.

(8) Claimant has a valid driver's license and drives an automobile approximately four times a month. Claimant is not computer literate.

(9) The following medical records are persuasive:

- (a) A [REDACTED] medical record was reviewed.

The physician provided the following background: Claimant is a 43-year-old man with anxiety and hyperlipidemia, who returns to the [REDACTED] today for follow-up. In late December, he had see a colleague in the clinic who initiated Paxil therapy. He is not sure if Paxil is the problem or not, but he is more clumsy. He finds himself being more sarcastic and acting out. He has a history of closed head injury and almost feels as if Paxil has caused him to 'regress.' He is not sleeping well despite using Benadryl in the evenings.

He is a commercial roofer and has not had new problems with muscle pain or weakness. No changes to speech. Denies bowel or bladder difficulties.

IMPRESSION AND PLAN:

- (1) Anxiety. Given his response to Paxil, I have elected to transition him to Citalopram. This may have a better side effect profile while still have excellent activity for anxiety.
- (2) Hyperlipidemia. Profile with ATL ordered for monitoring while on Lipitor 20 mg. daily.

* * *

- (b) A [REDACTED] note was reviewed.

The physician provided the following background:

This is a 52-year-old Caucasian male who came in for medication refill. The patient is a known coronary artery disease patient, hypertensive, hyperlipidemic and has a major depressive illness. He states that his mood is pretty good and he is able to sleep. No complaints of chest pain. No dyspnea on exertion and no orthopenia. No ankle swelling.

ASSESSMENT:

- (1) Hypertension;
- (2) For depression he is on Prozac and Desyrel.

- (c) A January 5, 2009 prescription pad notation was reviewed.

The notation is basically illegible. It appears the family physician is suggesting a psychiatric evaluation.

(10) The probative psychological 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 medical records basically consist of exams at the University of Michigan, which state that claimant has anxiety. However, there is no mental status evaluation or clinical evaluation in the file that would support the severe impairment. Taking the psychiatric reports in the record as a whole, the record does not establish that claimant is totally unable to work based on his anxiety disorder.

(11) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. [REDACTED] hospital records state that claimant's diagnosis is anxiety and hyperlipidemia. The university also states that claimant is status-post closed head injury and is a known coronary artery disease patient.

The medical record in this case is insufficiently developed and contains contradictory medical evidence. At this time, there is no reliable medical evidence to establish a severe, disabling physical condition.

(12) Claimant 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 benefits based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform a wide range of unskilled work.

The department evaluated claimant's impairments using SSI Listings 11.18, 5.05, 12.02, 12.04, 12.06, and 12.08. The department decided that claimant does not meet any of these Listings.

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. Claimants 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 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. Claimant must establish an impairment which is expected to result in death, has lasted for at least 12 months, and totally prevents all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 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.

However, SHRT evaluated claimant's eligibility based on SSI Listings 11.18, 5.05, 12.02, 12.04, 12.06, and 12.08. Claimant does not meet any of these Listings.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously performed factory work (machine operation and assembly for a temporary employment service). This work was light work.

The medical evidence of record establishes that claimant has a walking-balance impairment. However, claimant is not able to work around machinery with his balance problem.

Therefore, 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 combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based his panic attacks and anxiety disorder. The University of Michigan medical records do state that claimant has “anxiety.” However, there is no clinical assessment of claimant’s mental capacity in the file. Also, claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity. Taking the psychiatric record as a whole, claimant has not established a severe mental impairment that precludes all work activities.

Second, claimant alleges disability based on his balance impairment and his inability to process information. The medical evidence of record establishes that claimant would not be able to perform skilled work. However, this does not preclude claimant from all employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his panic attacks, his anxiety dysfunction, and his balance and concentration problems. Claimant currently performs an extensive list of activities of daily living, drives an automobile once a month and stated that he wishes to go back to school.

Considering the entire medical record, in combination with claimant’s testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary work (SGA). In this capacity, he is physically able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

Based on this analysis, 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 that 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: February 26, 2010

Date Mailed: February 26, 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 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

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