

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: 2008-30532  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 5, 2009  
Saginaw 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 February 5, 2009. Claimant personally appeared and testified under oath.

The department was represented by Cheryl Kubczak (ES).

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) and 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one (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 (December 6, 2007) who was denied by SHRT (September 18, 2008) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements SHRT relied upon. Claimant requests retro MA for September, October and November 2007.

(2) Claimant's vocational factors are: age—49; education—high school diploma; post high school education—took two semesters of waste management courses at [REDACTED]; work experience—laborer at the [REDACTED], lawn maintenance worker for [REDACTED] and offset printing press operator (10 years).

(3) Claimant has not performed Substantial Gainful Activity since October 2007 when he was a laborer at the [REDACTED].

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

- (a) Bipolar disorder;
- (b) Borderline personality disorder.

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

**OBJECTIVE MEDICAL EVIDENCE** [REDACTED]

SHRT decided that claimant is able to perform normal work activities. SHRT evaluated claimant's eligibility using Listings 1.04, 1.02, 6.02, 2.02 and 12.04. SHRT decided the claimant does not meet any of these listings.

SHRT determined that claimant has a nonsevere impairment under 20 CFR 416.920(c).

(6) Claimant lives with his elderly mother. He performed the following Activities of Daily Living (ADLs): Dressing, bathing, cooking, dishwashing, light cleaning, mopping, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower

stool. He does not wear braces on his neck, back, arms or legs. Claimant did not receive inpatient hospital services in 2008 or 2009.

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

(8) The following medical records are persuasive:

(a) A [REDACTED] [REDACTED] psychological medical report was reviewed.

The Ph.D. psychologist provided the following history of illness:

Claimant is a 47 year-old Caucasian male who came to the evaluation unaccompanied. When asked the reason for the evaluation, he indicated that he is seeking Medical Assistance and Disability Compensation. This is his second application for disability.

He reported an ongoing struggle with bipolar disorder. He reported that the last ten years have been a nightmare due to his high and low mood swings. He feels that his life has fallen apart due to his mental illness. He has been unable to maintain a stable relationship or employment. He has had severe angry outbursts that have led to a five-month jail term and a two-year prison term. While in prison, he was unable to maintain a stable workplace due to conflict with fellow inmates and supervisors. He cannot maintain employment due to his ongoing aggression with coworkers and employers.

He struggles from depressive symptoms including feelings of worthlessness, social isolation, and hopelessness about his future, anhedonia, decreased concentration, diminished libido, decreased motivation, sleep disturbances, and irritability. While in prison he had many thoughts of suicide. He did not mention symptoms which would describe manic episodes.

\* \* \*

Ph.D. psychologist provided the following additional information:

Claimant came to the evaluation seeking Medical Assistance and disability compensation. He noted that his current counselor diagnosed him with bipolar disorder. He reported mood swings over his lifetime that has been disruptive to his functioning. Because of this, he has been unable to maintain a stable relationship or employment. **However, after further examination, it appears that his mood swings consist of aggressive outbursts only related to his life situations.** He has had several aggressive outbursts that have led to a five-month jail term and a two-year prison term. While in prison, he was unable to maintain a stable workplace due to conflict with fellow inmates and supervisors. He cannot maintain employment due to his ongoing aggression with coworkers and employers.

His aggressive outbursts appear to be impulse control issues rather than manic episodes. He did not evince symptoms that would merit the identification of a manic episode. His anger is triggered by environmental stressors that lead to frustrations. These frustrations lead to aggressive, assaultive behavior that seems to be better accounted for by the diagnosis of 'Intermittent Explosive Disorder rather than Bipolar Disorder.'

\* \* \*

The Ph.D. psychologist provided the following DSM diagnoses:

Axis I—major depressive disorder, recurrent, severe without psychotic symptoms; intermittent explosive disorder.

Axis IV—GAF—65.

\* \* \*

(9) The probative psychological evidence does not establish an acute (non-exertional) condition, expected to prevent claimant from performing nonexertional (mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The medical records show that claimant has never been psychiatrically

hospitalized. The Ph.D. psychologist provided a diagnosis of major depressive disorder and intermittent explosive disorder, with an Axis V/GAF score of 65. Claimant did not provide a DHS-49D or 49E to establish his mental residual functional capacity. Taking the psychological report, in combination with medical record as a whole, claimant has not established that he is totally unable to work based on his mental impairment. Clearly, he has difficulty relating to people, but this does not preclude him from work that does not involve frequent contact with others.

(10) 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. There is no medical evidence of a physical impairment in the record that it totally precludes employment at this time.

(11) It is not known whether claimant has recently applied for federal disability benefits with the Social Security Administration.

## 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 Listing 1.04, 1.02, 6.02, 2.02, and 12.04. The department decided that claimant does not meet any of the applicable Listings.

Based on claimant's vocational profile [individual approaching advanced age, high school education, horses and waste management from ██████████], and a history of skilled

(pressman) and unskilled [REDACTED] labor work). The department denied disability on claimant's ability to perform normal work activities.

**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 does 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).

To determine to what degree claimant's alleged mental impairments limit his ability to do basic work activities, the following regulations must be considered.

**(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).

...The context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness, and sustainability. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

We do not define “marked” by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions. 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, a history of altercations, evictions, firings, fears 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 or Pace.**

If your mental impairment(s) is severe, we will then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the diagnostic medical findings about your

impairment(s) and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. 20 CFR 416.920a(d)(2).

**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 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, have existed for at least 12 months, and totally prevent all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work under 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.

None of the relevant Listings considered by SHRT have been specifically addressed and approved by the medical authorities which submitted reports on the record. Therefore, claimant has met his burden of proof to establish his disability based on a Listing.

**STEP #4**

The issue at Step 4 is whether claimant is able to do his previous work. Most recently, claimant worked as a laborer at a [REDACTED]. This was medium work. There is no medical evidence to establish that claimant is unable to perform medium work.

Claimant also has ten years of experience as a pressman operating printing machinery. There is no medical evidence in the record to establish that claimant is unable to work as a pressman.

Claimant does need the assistance of psychotropic medications in order to control his depression and explosive personality. Currently, he is receiving these medications from

[REDACTED].

Based on this analysis, claimant does not meet the Step 4 disability test.

**STEP #5**

The issue at Step 5 is whether claimant has a 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 on bipolar disorder and borderline personality disorder. The psychological report prepared by the consulting Ph.D. psychologist does not support claimant's allegations. The Ph.D. psychologist provided the following diagnoses: major depressive disorder and intermittent explosive disorder. The Ph.D. psychologist gave claimant an Axis V—GAF score of 65. The [REDACTED] psychological report does not establish that claimant has a severe mental impairment that totally precludes all work activities.

Second, claimant does not allege any physical impairment that would preclude him from substantial gainful activity. The claimant performs an extensive list of activities of daily living, also helps his elderly mother, as needed.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his mental impairments (major depressive disorder and intermittent explosive disorder). Claimant performs many activities of daily living, has an active social life with his mother and drives an automobile occasionally.

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 and mentally able to work as a ticket taker for a theater, as a parking lot attendant, as a telemarketing representative and as a carry out clerk at a grocery store.

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 23, 2009

Date Mailed: February 24, 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/tg

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cc:

