

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: 2008-7334
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2008
Ogemaw 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 West Branch on March 11, 2008. Claimant personally appeared and testified under oath.

The department was represented by Diane Clark (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) 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/retro/SDA applicant (May 24, 2007) who was denied by SHRT (February 7, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for February, March and April, 2007.

(2) Claimant's vocational factors are: Age 39; education -- 11th-grade; post high-school education -- GED and on-the-job training as a bricklayer; work experience -- chore service provider for his mother and a masonry apprentice to learn the bricklaying trade.

(3) Claimant is currently performing substantial gainful activity (SGA) by providing chore services for his mother in return for a stipend from the State of Michigan.

(4) Claimant has the following complaints:

- (a) Status post right-hand injury (2005);
- (b) Bipolar disorder; and
- (c) Status post suicide attempt (2/2007).

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

OBJECTIVE MEDICAL EVIDENCE (February 7, 2008)

Hospital records of 2/2007 indicate claimant was hospitalized after a suicide attempt. He was given discharge diagnoses of major depression--recurrent, opioid dependence and alcohol dependence. Claimant had no previous psychiatric treatment other than for substance abuse (pp. 96, 19, 12, and 7).

ANALYSIS: Claimant is a 38-year-old in the process of divorce and unemployed, who early in 2007 was depressed and attempted suicide by drug overdose. He was hospitalized and his condition improved. Subsequently he has been in treatment. With continued compliance with treatment and abstinence from substances, it is

expected that his condition will improve such that he would be capable of at least unskilled work.

The evidence in the record does not demonstrate any other impairment that would pose a significant limitation.

* * *

(6) Claimant lives with his mother and provides chore services for her including cooking, housework, grocery shopping, household maintenance (shoveling the walk), and helping his mother remember her meds. Claimant personally performs the following activities of daily living: dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower seat. He does not wear braces on his arms or legs.

(7) Claimant does not have a valid driver's license. Claimant is computer literate. Claimant performs many household activities (cooking, housework, grocery shopping, household maintenance, and assistance with medications for his mother).

(8) The following medical records are persuasive:

(a) A [REDACTED] intake assessment was reviewed. The mental health provider provided the following psychosocial history:

Claimant is living with his mom since November, 2006. In February, 2007, claimant was at a girlfriend's home [REDACTED] when he overdosed. Claimant's wife resides in [REDACTED]. She is reportedly divorcing claimant there. Claimant has two kids, a four-year-old son and a 12-year-old daughter. His daughter has a heart murmur and skin disorder. His son may be developmentally delayed. Claimant has one brother and three sisters. He described his family as close. His brother reportedly smokes pot and one sister is an alcoholic. Claimant has a diploma from the local high school. His dad was a mason and claimant and his brother helped him. Claimant has worked in construction most of his adult life. He lived 18 years in [REDACTED] and [REDACTED]. He was married 12 years ago. Claimant has been sober for five years. His father died three years ago following a heart attack.

* * *

(b) A [REDACTED] [REDACTED] intake was reviewed. It shows the following diagnoses:

Primary diagnoses: MDD, recurrent, severe without psychosis; amphetamine dependence in early partial remission; and post-traumatic stress disorder (PTSD). Axis V/GAF--38.

(c) A [REDACTED] history and physical was reviewed. The physician provided the following history:

Claimant has a dual present illness. He overdosed on Compazine and Coreg, but he has had a history of substance abuse for many years. He is now living here locally with his mother, having returned from [REDACTED], where he had been for awhile. It is not clear why he moved to [REDACTED], except that he moved there to get married to a young woman and they have two children together, and there are two other children that he inherited as a result of his marriage. It is unfortunate that the marriage did not work and he is now separated from his wife. It is not clear, but it seems that drugs played a major part in this issue. While in [REDACTED], claimant was admitted to the hospital for alcohol poisoning on two occasions, and while he defined it as alcohol poisoning, it was more than five drinks in a one-day period, and it is clearly more reflective of alcohol dependence than poisoning. He also uses marijuana, cocaine and other drugs, and he was treated in a community in Utah for his substance abuse and mental health problems. He apparently has been using marijuana again while here. The problem now has been that he is not stable, not working, is unemployed, feels helpless, hopeless, and useless. He feels at this point in time he has a difficult and impossible situation and felt that death was a better option.

The physician provided the following DSM for diagnostic impression: Axis I--major depression, recurrent; alcohol dependence, in limited remission; nicotine dependence, active; cocaine abuse; and cannabis dependence. Axis V/GAF--25.

* * *

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work

functions for the required period of time. Claimant was recently evaluated by a physician at the [REDACTED] for a drug overdose. The physician provided the following DSM diagnostic impression: Axis I--major depression, recurrent; alcohol dependence, in limited remission; nicotine dependence, active; cocaine abuse; and cannabis dependence. Axis V--GAF: 25.

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) condition expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has the following conditions: headaches, fainting spells, balance problems, sleep disorder, binge eating, and a swallowing problem.

(11) Claimant's primary complaints are his bipolar condition and his recent suicide attempt. Claimant also reports a right-hand injury in 2005, although there are no details on this.

(12) Claimant has applied for federal disability benefits. His application was denied. He has filed a timely appeal.

CONCLUSIONS OF LAW

Claimant's Position

Claimant thinks he is unable to work a full 40-hour week and is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above. Claimant also requests retro MA for February, March and April, 2007.

Department's Position

The department thinks that claimant has normal residual functional capacity to perform a wide range of unskilled work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The department thinks that claimant is disqualified for MA-P/SDA benefits based on Public Law 104-121 due to claimant's drug and

alcohol history. The department thinks that claimant's psychiatric impairments are improving or expected to improve within 12 months from the date of onset (suicide attempt). The department denied MA-P due to lack of duration. SDA was denied because claimant has not been precluded from all work activities for at least 90 days.

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 (formerly known as the Family Independence Agency) 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 (formerly known as the Family Independence Agency) 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 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 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.

Claimant meets the Step 1 eligibility 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 from the date of application. 20 CFR 416.909. Also to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the severity/duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limits his physical and/or mental ability to do basic work activities, he does not meet the Step 2 criteria. 20 CFR 416.920(c). SHRT found that claimant does not meet the severity and duration requirements.

Claimant does not meet the Step 2 eligibility 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.

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 is currently working as a chore service provider for his mother. Claimant receives income from the State of Michigan totaling \$209.58 a month. Claimant's chore service activities constitute substantial gainful activity.

Claimant does not meet the Step 4 eligibility test.

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] Department of Labor at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is currently performing unskilled medium work. Claimant is able to work as a ticket-taker for a theatre, as a parking-lot attendant, or as a greeter for [REDACTED]. Also, he is currently working as a chore service provider for his mother and receiving payments from the State of Michigan.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his right-hand injury, bipolar impairment, and the February, 2007 suicide

attempt. Claimant currently performs numerous activities of daily living for himself, and he is performing substantial gainful activities for his mother for pay.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application.

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. Claimant is not disabled for MA-P/SDA purposes based on Steps 2, 3, 4 and 5 of the sequential analysis, as described above.

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 28, 2009

Date Mailed: August 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.

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cc:

