

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: 2008-9838
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 19, 2008
Genesee 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 Flint on August 19, 2008. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED] [REDACTED]).

The department was represented by Terri Steiner (ES) and Leona Johnson (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. The record was closed on August 19, 2008. Claimant's new medical evidence (C1, pages 17-19) was submitted to the State Hearing Review Team (SHRT) on August 19, 2008. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge issued the Decision and Order below.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?

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 (September 21, 2007) who was denied by SHRT (March 10, 2008 and August 25, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for June, July and August 2007.

(2) Claimant's vocational factors are: age--53; education--10th grade, post-high school education--GED; work experience--donations collector for [REDACTED], prep cook at a restaurant.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since January 2006 when he was a donations collector for [REDACTED].

- (4) Claimant has the following unable-to-work complaints:
- (a) COPD;
 - (b) Asthma;
 - (c) Anxiety;
 - (d) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (March 10, 2008)

Medical evidence of record submitted for review from claimant's treating physician, reported as of 9/2007, all the major body systems were functioning normally and that claimant retained the ability to work at his usual occupation (page 5 and 7).

ANALYSIS: Claimant's conditions are stable. It was assessed that claimant retained the capacity to perform his past usual work.

* * *

- (6) Claimant lives alone, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, laundry and grocery shopping. Claimant is able to handle his own funds. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear a brace on his neck, arms, or legs. Claimant was not hospitalized as an in-patient in 2007 or 2008.

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

- (8) The following medical/psychological records are persuasive:

- (a) An August 12, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnoses: hypertension (HNT), COPD, depression and anxiety.

The physician provided the following work limitations (physical): Claimant is able to lift less than 10 pounds frequently. Claimant is able to lift up to 20 pounds occasionally. Claimant is able to sit/walk at least 4 hours in an 8-hour day. He is able to sit about 6 hours in an 8-hour day. Claimant is able to use his hands/arms for simple grasping and pushing and pulling. He is able to use his left hand/arm for reaching and pushing/pulling. Claimant is able to use his feet/legs normally.

The physician provided the following work limitations (mental): limited comprehension, limited ability for sustained concentration, limited ability to follow simple directions, limited ability to engage in social interaction. Under notations, the physician reports that claimant is irrational and has a lack of common sense.

* * *

- (b) An August 12, 2008 Medical Needs form (DHS-54A) was reviewed.

The physician reports that claimant does not need medical assistance for any of his personal care activities.

The physician reports that claimant is not able to perform his usual occupation. He is able to work at any job, if cleared by a psychiatrist.

NOTE: Claimant's treating physician has given less than sedentary work restrictions, based on claimant's physical and mental impairments (HNT, COPD, depression and anxiety). However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record. 20 CFR 416.927(e).

* * *

- (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 has been diagnosed with anxiety disorder and depression. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity. Claimant's treating physician states that his mental impairments are: anxiety and depression. While it is true, that claimant's treating physician reports that he is totally unable to work, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record. (See Paragraph #8, above.)

(10) The probative medical evidence 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 physician reports the following impairments: HNT, COPD. While it is true that claimant's treating physician reports that he is totally unable to work due to his physical impairments, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record.

(11) 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 based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform normal work activities.

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 has the Residual Functional Capacity (RFC) to perform past usual work.

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 department evaluates mental illness as the basis for disability using the following standards:

The department evaluates mental illness allegations 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, a history 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 or 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).

A statement by a medical source (MSO) that an individual is “disabled” or unable to work” does not mean that disability exists for the purposes of the MA-P program.

20 CFR 416.927(e).

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 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 criteria. 20 CFR 416.920(c).

Claimant alleges disability based on a combination of impairments: COPD/asthma and anxiety/depression. Using the *de minimus* test, claimant meets the severity and duration 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 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a donations collector for [REDACTED]. Claimant's Goodwill employment was sedentary work.

Except for the Medical Source Opinion (MSO) provided by claimant's treating physician, there is no medical evidence in the record that claimant cannot return to his previous work as a donations collector.

Because claimant's Medical Source Opinion (MSO) is not supported by the great weight of the evidence in the record, it will not be given controlling weight. 20 CFR 416.927(c) and 20 CFR 416.927(d).

Since claimant is able to return to his previous work, he does not meet 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 meets the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on his mental impairments (anxiety and depression). Claimant did not submit a DHS-49D or a DHS-49E to establish his residual mental functional capacity. Therefore, claimant does not meet the disability standards based on his mental impairments.

Second, claimant alleges disability based on his COPD/asthma. The only evidence in support of claimant's disability based on his physical impairments was provided by his treating physician. However, this Medical Source Opinion (MSO) cannot be given controlling weight because it is contrary to the great weight of the medical evidence in the record. See citation, at page 7, above.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his mental impairments and his physical impairments.. Claimant currently lives alone and performs extensive activities of daily living. He is able to manage his appointments with his physical therapist, his mental health therapist, and his drug rehabilitation therapist.

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, he is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

The department correctly denied claimant's MA-P application based on Step 5 of the sequential analysis presented above. The determination previously made by MRT awarding claimant SDA is not binding on the Administrative Law Judge.

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 disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby,
AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 3, 2009

Date Mailed: December 4, 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 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

cc:

