

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: 2008-17669
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 14, 2008
Gladwin 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, an in-person hearing was held in Gladwin on October 14, 2008. Claimant personally appeared and testified under oath.

The department was represented by Nancy Doyle (FIS).

Claimant requested additional time to submit new medical evidence requested by SHRT. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on August 8, 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 (December 4, 2007) who was denied by SHRT (June 10, 2008) due to claimant's failure to submit probative medical evidence in support of his disability.

(2) Claimant's vocational factors are: age--43; education—high school diploma, post-high school education—journeymen carpenter (10 years); work experience—shift supervisor for an acoustical ceiling company and foreman for a construction company.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004, when he worked as a shift supervisor for an acoustical tile contractor.

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

- (a) Heart dysfunction;
- (b) COPD/emphysema;
- (c) Crohn's Disease;
- (d) Reflux syndrome;
- (e) Carpel tunnel syndrome (both hands);
- (f) Bipolar;
- (g) Depression;
- (h) Anxiety.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 10, 2008)

Claimant failed to submit objective medical records to establish a severe impairment.

* * *

(6) Claimant lives with his wife and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning, mopping, vacuuming and grocery shopping. Claimant was hospitalized in 2007, but does not know what he was treated for. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces on his neck, his back, his arms or his legs.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A November 30, 2006 psychiatric evaluation was reviewed.

The psychiatrist provided the following history:

Claimant has stated that he has been having highs and lows, describing his highs to be feeling pretty good, sleeping well with no significant problems with appetite or weight changes. However, when depressed, which might last for 2-7 days, claimant has initial insomnia with decrease in appetite; he has no energy or motivation, is withdrawn and irritable with decrease in interest. He has also been having crying episodes lately. Claimant stated that though he has had depression all of his life, which he could not get help for it in [REDACTED] because of the system. He has been getting help for the last year or so. He stated he was on Lexapro, which he was taking 10 mg daily, but since it was ineffective while he was seeing a psychiatrist in [REDACTED], it was changed to Wellbutrin (150mg daily), which he has been taking for the last 6-7 months, which he does not find effective. He denies side effects from Lexapro or Wellbutrin. He denies any suicidal ideations, though he has a long history of suicidal behavior in the past. He reports no other difficulties.

Claimant gives a history of being psychiatrically treated in the unit in [REDACTED] several years ago. He was also treated at a [REDACTED] hospital for depression as well. I have followed him at the [REDACTED] [REDACTED] in the past. He reports to have tried on Elavil, Klonopin and Sinequin the past. After he moved to Alabama, he did not get any treatment and apparently has stopped treatment even before that. He has not been on any

medication for almost 10 or more years, until recently. He has also not required any hospitalization for several years. In the past, beside depression, the patient also had panic disorder. He was taking Klonopin at one time.

* * *

SOCIAL HISTORY:

Claimant stated he has not been working since the last 2 years. Apparently he stopped working after having a heart attack in 2004, which required hospitalization. He also had his part of the left lung removed as well in the same year. He stated that he was laid-off from work at that time, since they could not take the risk of him having problems. He stated as to how he was a foreman at the time and had been so for years before. He has always worked construction and had jobs while in [REDACTED] on a fairly regular basis. Claimant does not have any source of income at this time, though he stated as to how he had a court hearing for disability in [REDACTED] this month. He is waiting for the final results and was represented by an attorney.

* * *

The psychiatrist provided the following mental status examination:

When seen today, claimant was in alert, pleasant, coherent, relevant, fairly talkative, spontaneous male who complained about being depressed, showing no psychomotor agitation or retardation. He maintained good eye contact, appearing fairly comfortable during the session. There was no evidence of any psychosis or thought disorder. His speech was full direct, his affect appropriate. He was appropriately concerned about his depressive symptomatology. He denies any hallucinations. No expression of delusional thinking. No pressure of speech, irritability or agitation. No psychotic symptomatology.

DIAGNOSIS:

Axis I—Dysthymic disorder; past history of panic disorder; history of marijuana abuse, in remission.

Axis V—not available.

* * *

(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 suffered from depression and bipolar

disorder. However, there is no psychiatric evidence to establish either of those diagnoses. The most recent psychiatric evaluation (November 30, 2006) provides the following Axis I diagnosis: Dysthymic disorder; past history of panic disorder; history of marijuana abuse, in remission.

(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 November 7, 2007 report from the [REDACTED] shows the following discharge diagnoses: Crohn's disease; coronary artery disease; nicotine abuse. The physician did not state claimant was totally unable to work.

(11) There is no information of claimant's Social Security status at this time.

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 normal work activity.

The department was unable to evaluate claimant's mental/physical impairments due to claimant's failure to submit timely medical evidence.

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).

To determine to what degree a mental impairment limits claimant's ability to work, 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).

(b) **Social Functions.**

...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).

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).

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 meet any of the applicable 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 foreman at an acoustic tile contracting company. Claimant's work as a foreman was light work.

There is no medical evidence in this record to establish that claimant is not able to return to light work.

Therefore, claimant is able to return to his previous work as a supervisor for an acoustical tile contractor.

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 bipolar disorder, anxiety disorder and depression. The most recent psychiatric evidence is November 30, 2006 provided the following diagnosis: dysthymic disorder; past history of panic disorder; history of marijuana abuse, in remission. The psychiatric evidence in the record does not establish that claimant has a severe mental impairment that totally precludes all substantial gainful activity.

Second, claimant thinks he is disabled based on his heart dysfunction, COPD/emphysema, Crohn's disease, reflux disorder and bilateral carpal tunnel syndrome.

The medical evidence of record does not establish that any of these conditions, or all of these conditions, are so severe that claimant would be totally unable to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to perform any work based on his combination of impairments as well as his anxiety, bipolar and depression. Claimant currently performs many activities of daily living, has an active social life with his spouse.

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/light 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: August 24, 2009

Date Mailed: August 25, 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/sd

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