

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: 2008-17929
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 22, 2008
Wexford 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 Cadillac on October 22, 2008. Claimant personally appeared and testified under oath.

The department was represented by Linda L. VanHouten (FIM).

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/SDA applicant (November 28, 2007) who was denied by SHRT (May 19, 2008) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age--47; education--high school diploma; post-high school education--none; work experience--material handler, and shipping and receiving clerk.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he worked as a material handler.

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

- (a) Major depression;
- (b) Heart dysfunction;
- (c) Takes medications for heart condition and depression;
- (d) Hypertension (controlled);
- (e) Totally blind in left eye due to detached retina.

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

OBJECTIVE MEDICAL EVIDENCE (May 19, 2008)

PHYSICAL:

He underwent an angioplasty with stenting in 9/2005 and again in 3/2006 (due to non-compliance with medication) (pages 116-124). He was noted to be blind in his left eye due to a previous retinal detachment. According to a 1/2008 consultative exam, he was 65 inches and 201 pounds and his blood pressure was 150/100. His lungs were clear with mildly decreased breath sounds. The vision in his right eye was normal with correction. He had no neurological deficits, walked with a normal gait, and did not exhibit any mental weakness (pages 11-14).

MENTAL:

He has a history of outpatient treatment at CMH for major depression and alcohol dependence with normal mental status examinations (pages 26-104). According to a 2/2008 psychiatric

examination, his mental status was normal, memory was intact, and he was noted to have a history of polysubstance abuse. He was diagnosed with major depression (page 71).

ANALYSIS:

Claimant's alleged physical and mental impairments do not meet or equal Listings 2.02 (vision impairment), 4.04 (heart disease), or 12.04 (depression). Based on the preponderance of the objective physical medical evidence in the record, and in accordance with 20 CFR 416.967(c), claimant's physical residual functional capacity is assessed at the medium exertional level. Additionally, the preponderance of the objective psychiatric/psychological evidence shows that claimant is capable of performing a wide range of unskilled work on a sustained basis, per 20 CFR 416.968(a).

(6) Claimant lives in an adult foster care home, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, and vacuuming. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear a brace on his neck, back, arms or legs. Claimant was hospitalized in 2007 for treatment of his heart condition and in 2008 for angina.

(7) Claimant has an [REDACTED] driver's license, but does not drive an automobile. Claimant is computer literate.

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

(a) See the summary of medical evidence provided by SHRT in paragraph #5, above.

(9) The probative psychiatric 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 is unable to work due to major depression. The psychiatric reports in the record show major depression and alcohol dependence, with normal mental status examinations. But the psychiatrist did not state that the claimant is totally unable to work.

(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 medical reports in the record show that claimant underwent angioplasty with stenting in September 2005 and March 2006, due to noncompliance with his medications. The medical reports show that claimant is blind in his left eye due to a previous retinal detachment. The vision in his right eye is normal with correction. Claimant has no neurological deficits and walks with a normal gait and did not exhibit any muscle weakness. The reporting physicians did not state that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application; claimant requested a hearing.

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's alleged physical and mental impairments do not meet or equal Listings 2.02 (vision impairment), 4.04 (heart disease) or 12.04 (depression).

Based on the preponderance of the objective physical/medical evidence, claimant is able to perform medium work.

Therefore, based on claimant's vocational profile [younger individual (age 47), high school graduate and history of unskilled work], claimant is not eligible for MA-P based on Med-Voc Rule 203.28, as a guide.

Based on the psychiatric evidence of record, claimant retains the capacity to perform a wide range of unskilled medium work.

The department denied SDA based on PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity for 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 (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 severe 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 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).

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/psychological/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, therefore preventing all work activities. 20 CFR 416.909.

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

Since the severity/duration requirement is *de minimus*, 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. SHRT evaluated claimant's disability application using the following Listings: 2.02

(vision impairment), 4.04 (heart disease), and 12.04 (depression). Claimant does not meet any of these Listings.

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

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a material handler. Claimant's work as a material handler was medium work.

The medical evidence of record does not establish that claimant is totally unable to work as a material handler. There are no lifting restrictions reported in the medical evidence of record.

Because claimant's previous work (material handler) was unskilled medium work, he is able to return to that work based on the medical evidence of record to date.

Therefore, claimant 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/psychiatric/psychological evidence of record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on depression. There is psychiatric/psychological evidence in the record to establish a diagnosis of major depression. However, the psychiatric/psychological evidence does not state unequivocally that claimant is totally unable to work. In addition, claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on back dysfunction and hypertension. The medical evidence of record does not establish that claimant is totally unable to work based on claimant's physical impairments.

During the hearing, claimant testified that he is unable to work due to lumbar disc disease. There is no evidence in the record to establish lumbar disc disease.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his depression, heart dysfunction and back (lumbar) dysfunction. Claimant currently performs numerous activities of daily living and has an active social life with others who live at the [REDACTED] home with him. Claimant is computer literate, and has a valid driver's license. Considering the entire medical record, in combination with claimant's testimony, this Administrative Law Judge concludes claimant is able to perform simple unskilled medium work (SGA). In this capacity, claimant is able to work as a ticket taker for a theater, as a parking lot attendant, as a parking lot sweeper 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: January 22, 2010

Date Mailed: January 25, 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 receipt date of the rehearing decision.

JWS/kgw

cc:

