

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: 2008-21300
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 14, 2008
Wayne 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 August 14, 2008 in Inkster. Claimant personally appeared and testified under oath.

The department was represented by Marietha Allman (Medical Contact Worker).

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 (January 17, 2008) who was denied by SHRT (July 2, 2008) due to claimant's ability to perform unskilled medium work.

(2) Claimant's vocational factors are: age—34; education—high school diploma; post high school education—none; work experience—telemarketer, porter for a mobile home/recreational vehicle store; tool and dye setter.

(3) Claimant has not performed substantial gainful activity (SGA) since 2006 when he was a telemarketer.

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

- (a) Diabetes;
- (b) Takes diabetic medications;
- (c) Blurry vision;
- (d) Overweight (400 pounds);
- (e) Bulging discs syndrome;
- (f) Knee and feet pain;
- (g) Has to stand for long periods;
- (h) Addicted to pain killers;
- (i) Unable to do heavy lifting;
- (j) Status post gallbladder removal (2008);
- (k) Borderline suicidal;
- (l) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (July 2, 2008):

Psychological evaluation of 3/3/2008 reported normal findings with the exception of low motivation and depressed mood. He was given an Axis I: heroin dependency in remission; cannabis dependence, in remission; and depression. GAF was estimated at 55.

Medical Examination Report of 2/2008 indicates that claimant was obese with chronic joint pain, major depression and hypertension. His blood pressure was reported to be 145/88.

ANALYSIS:

Psychological evaluation suggests claimant would have difficulty performing skilled work. His movements with gait, ability, and range of motion were normal.

Medical Examination Report of 2/28/2008 indicated claimant was 5'9" tall and weighed 399 pounds.

Medical opinion was considered in light of 20 CFR 416.927. The medical evidence in the file does not demonstrate any other impairment that would pose a significant limitation.

* * *

(6) Claimant lives with his mother, and performs the following Activities of Daily Living (ADLs): Dressing, bathing, cooking, dishwashing, laundry and grocery shopping (sometimes). Claimant was hospitalized in 2008 for gallbladder surgery. Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear a brace on his neck, arms or legs. Claimant currently sees a therapist weekly and psychiatrist every four weeks.

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

(8) The following medical/psychological records are persuasive: (a) a March 3, 2008 Ph.D. psychological report was reviewed.

(9) Ph.D. psychologist provided the following introduction:

Claimant is 34 years old.

* * *

(a) He lives with his mother, his brother age 36. He does not drive a car, and last drove one six months ago. At that time, his license was suspended because of unpaid tickets.

His brother drove him to today's appointment. He remained alert, cooperative, and communicative. His mood had a somberness of someone who has long been depressed with family disaffection and who has a lot of pain in his neck and in his back and legs from hard labor in which he was engaged. His obesity (400 pounds), he knows exacerbates the pain.

Complaints and symptoms: physical-medical conditions. Lower back pain, which has crept up on him, though he did a lot of heavy lifting when he worked at the GM Power Train Plant. He has also lifted heavily when he worked at Bayloff Dye and Machine. He also worked in construction doing cement work.

* * *

Psychological or psychiatric conditions. History of marijuana and heroin dependencies, in remission. History of depression, also current.

He was last employed in 2006 in [REDACTED] at a call center, where he worked for about four months. He has looked for work since returning to Michigan, but has not been hired, he thinks because of his weight. He said he is a skilled dye-setter, but there are no jobs for him in this area. He said that he got into opiates, first with pain pills, then heroin. He said that he cannot stand for very long periods. When he worked, he got along with people, which I found to be credible. He said that he always got good performance evaluations and he has never been fired from a job.

Daily functioning:

He helps his mother with light housework, loading the dishwasher, cutting the grass (with a Rider), although he gets out of breath quickly. He watches a lot of TV. He naps here and there. He wakes up a lot at night, and he is slow to fall asleep.

* * *

The Ph.D. psychologist provided the following diagnoses: Axis I—heroin dependency in remission; cannabis dependency, in remission; depression (chronic and intermittent) in relation to long history of family unhappiness, and in relation to physical health stressors.

* * *

Axis V/GAF—55.

Ability to manage funds:

Claimant is able to make change, able to pay a bill or mailed charge and has adequate judgment to spend appropriately; no drug abuse/dependency is still a factor. The Ph.D. psychologist recommended that claimant's funds be handled by a payee.

- (b) A February 28, 2008, Medical Examination Report/FIA-49 was reviewed.

The physician provided the following current diagnoses: major depressive disorder, hypertension/HNT, chronic back and joint pain, and morbid obesity (399 pounds).

- (c) The physician reported the following abnormal findings: Claimant unable to stand for long periods; unable to bend his torso. Claimant's range of motion is significantly restricted. Shortness of breath with exertion.

The physician provided the following limitations:

Claimant unable to perform lifting and carrying. Totally unable to stand or walk. Able to sit one hour per day. Claimant is able to use his hands/arms for simple grasping and fine manipulating; not able to do reaching or pushing-pulling. Claimant is able to operate foot controls for short periods. Claimant has memory deficits due to major depressive disorder.

NOTE: Claimant's treating physician has given less than sedentary work restrictions, based on the claimant's physical impairments (major depressive disorder, hypertension/HTN, chronic back/joint pain and morbid obesity). However, this medical source opinion (MSO) is inconsistent with a great weight of the objective medical evidence.

(10) 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. The consulting psychologist provided the following diagnoses: heroin dependency and committed the lapse vulnerable remission, cannabis dependency, in remission: depression (chronic and intermittent) in relation to long history of family and unhappiness, and in relation to physical health stressors. Axis V/GAF 55. The Ph.D. psychologist did not report any functional limitations due to claimant's mental impairments.

(11) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent him from performing all customary work functions for the required period of time. While it is true that the internist's report states that claimant is totally unable to work, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record, as well as with claimant's testimony, and is contradicted by claimant's testimony.

(12) Claimant has applied for federal disability benefits with the Social Security Administration (SSA). Social Security denied his application; claimant has filed a timely appeal.

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 has a Residual Functional Capacity (RFC) to perform a wide range of unskilled medium work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department denied MA-P/SDA application because claimant is able to perform medium work under 20 CFR 416.920(e).

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).

The department decides eligibility based on mental impairments using 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).

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 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 that profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 criteria.

Claimant meets the severity and duration test based on his major depressive disorder, chronic joint pain and high blood pressure.

STEP #3

The issue at Step 3 is whether the 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 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a telemarketer. Prior to that, he worked as a porter for a recreational vehicle company. Claimant's work as a telemarketer was sedentary work. Except for the medical source opinion (MSO) provided by the reporting internist (February 28, 2008), there is insufficient evidence to establish that claimant cannot perform sedentary work.

Because claimant's medical source opinion is not supported by the great weight of the evidence in the record, and contrary to claimant's testimony at the hearing, it will not be given controlling weight. 20 CFR 416.920(c) and 20 CFR 416.927(d).

Since claimant is able to return to his previous work as a telemarketer, and as mobile home porter, 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 meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on major depressive disorder. The Ph.D. psychological report provided Axis I diagnoses of heroin dependency, in remission, cannabis dependency, in remission, and depression (chronic and intermittent). Claimant has a GAF of 55 (moderate). The psychological evidence of record does not establish a mental impairment so acutely severe that claimant is totally unable to perform sedentary work.

Second, claimant alleges disability based on morbid obesity, chronic back and joint pain and hypertension. The medical examination report (2/28/2008) provided by the internist states that claimant is totally unable to do any work. 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, including claimant's testimony at the hearing. See citation above.

During the hearing, claimant testified that a major impediment to his return to work was his chronic joint pain (back, neck, knee, foot, and ankle). Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to perform sedentary work based on his major depressive disorder. Claimant currently performs numerous activities of daily living, and has an active social life with his mother. Claimant was able to represent himself at the hearing in a confident fashion. 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). For example, claimant is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

The department correctly denied the 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 the 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 is hereby, AFFIRMED.
SO ORDERED.

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

Date Signed: January 4, 2010

Date Mailed: January 4, 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 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

cc:

