

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: 2008-25530
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 29, 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 29, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED]).

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 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for 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 SDA applicant (February 1, 2008) who was denied by SHRT

(July 29, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age--18; education--9th grade; post-high school education--none; work experience--roof tear off worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004 when he worked as a roofing laborer.

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

- (a) Mood disorder;
- (b) Status post psychiatric hospitalizations (x2);
- (c) Depressive disorder, recurrent;
- (d) Avoids contact with the public;
- (e) Hypertension;
- (f) Shortness of breath;
- (g) Sleep apnea.

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

OBJECTIVE MEDICAL EVIDENCE (July 29, 2008)

SHRT reviewed claimant's request for disability benefits based on mood disorder, hypertension, shortness of breath and sleep apnea.

SHRT reviewed claimant's eligibility under SSI Listings 12.04, 12.05, 12.06, 4.02, 4.06, 3.02 and 3.10.

SHRT determined that claimant did not meet any of the SSI Listings.

SHRT denied claimant's application for disability based on his failure to establish a severe impairment under 20 CFR 416.920(c). SHRT denied eligibility based on claimant's history of alcohol abuse under 20 CFR 416.435.

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, a walker, a

wheelchair, a shower stool or braces. Claimant was hospitalized in 2007 at [REDACTED] for 21 days.

The discharge diagnosis was oppositional defiant disorder.

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

He is not computer literate.

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

- (a) A May 14, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnosis: depressive disorder with psychotic features.

The physician reports no physical limitations that would interfere with job performance. The physician reports no mental limitations that would interfere with job performance.

- (b) A March 31, 2008 psychiatric/psychological examination report (DHS-49D) was reviewed.

The physician provided the following mental status examination: three of psychosis compliant with medications.

The psychiatrist provided the following DSM diagnosis:

AXIS I--depression, NOS with severe psychosis
AXIS V/GAF--60.

- (c) A March 31, 2008 mental residual functional capacity assessment (DHS-49E) was reviewed.

The psychiatrist reported only one mental activity in the "markedly limited" category: the ability to travel in unfamiliar places or use public transportation.

The psychiatrist did not report any work limitations.

- (9) The probative psychological/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. The psychiatric/psychological examination report

(DHS-49D) reports that claimant is free of psychoses and compliant with medications. The diagnosis is the depression NOS with severe psychosis; Axis V/GAF--60.

(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 May 2008 Medical Examination Report (DHS-49) contains a diagnosis of depressive disorder with psychotic features. The physician states that there are no physical or mental limitations associated with this diagnosis.

(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 SDA based on the impairments listed in paragraph #5, above.

DEPARTMENT'S POSITION

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

The department reviewed claimant's disability application using SSI Listings 12.04, 12.05, 12.06, 4.02, 4.06, 3.02 and 3.10. Claimant is not eligible based on any of these Listings.

LEGAL BASE

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 SDA purposes. PEM 261. "Disability," as defined by 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 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.

Claimant must establish that he has a severe impairment which is expected to result in death or which has lasted or is expected to last for a continuous period of 90 days. Thereby precluding all work activity. 20 CFR 416.909.

Also, to qualify for 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 eligibility using SSI Listings 12.04, 12.05, 12.06, 4.02, 4.06, 3.02 and 3.10.

Based on a careful review of the applicable Listings, 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 roofing laborer tearing off old roofs. Claimant's work as a roofing laborer was medium work.

The medical evidence of record does not establish that any of claimant's physical impairments totally prevent him from working as a roofer.

The psychiatric evidence of record does not establish that claimant's mental impairments are so severe that he is totally unable to work as a roofer. The record indicates that claimant has some marginal social functioning with his mother and his other family members. There is evidence that he does not like to associate with strangers, however.

There is no evidence that claimant lacks the ability to concentrate and persist in the work setting. During the hearing, claimant was able to focus on the questions which were asked and was able to participate meaningfully in the hearing.

Finally, claimant's activities of daily living demonstrate that he is mentally able to perform Substantial Gainful Activity. Claimant performs numerous activities of daily living at this time.

Based on a careful analysis of claimant's mental and physical impairments, this Administrative Law Judge concludes that claimant is able to return to his previous work as a roofing assistant.

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 SDA purposes.

First, claimant alleges disability based on mental impairments (mood disorder, depressive disorder and avoidance of strangers). The DHS-49D and the DHS-49E do not state that claimant is totally unable to work due to his mental impairments.

Second, claimant alleges disability based on his hypertension, shortness of breath and sleep apnea. There is no recent medical evidence in the record to establish that these conditions totally prevent claimant from performing Substantial Gainful Activity.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his mental and physical impairments. Claimant currently performs an extensive list of activities of daily living and has an active social life with his mother and other relatives. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform normal work activities at the present time. In this capacity, claimant is able to work as a ticket taker at a theater, as a parking lot attendant, as a greeter for [REDACTED] and as a roofer's assistant.

Based on this analysis, the department correctly denied claimant's 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 SDA disability requirements under PEM 261.

Accordingly, the department's denial of claimant's 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

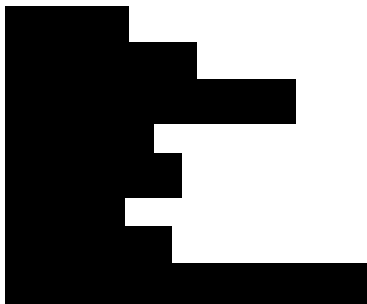
Date Mailed: January 25, 2010

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.

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