

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: 2008-25718
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2009
Muskegon 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 on May 12, 2009 in Muskegon. Claimant personally appeared and testified under oath.

The department was represented by Kelly Curow (FIM).

ISSUES

(1) Did the department provide probative psychiatric evidence to show marked improvement in claimant's mental condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

(2) Did the department provide probative medical evidence to show marked improvement in claimant's physical condition to the degree that claimant is now able to perform Substantial Gainful Activity (SGA) on a **continuous** basis?

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 a current SDA recipient who had an eligibility review in May 2008. Claimant's MA-P benefits were recently cancelled because of a final action taken by Social Security denying claimant SSI.

(2) On July 12, 2008, MRT denied ongoing SDA benefits because claimant retains the capacity to perform his past relevant unskilled work.

(3) On July 17, 2008, the local office notified claimant that MRT had denied ongoing SDA benefits.

(4) On August 5, 2008, claimant filed a timely hearing request. The local office pended the closure of claimant's SDA pending the results of this hearing.

(5) Claimant's vocational factors are: age--29; education—high school diploma; post-high school education—one semester at [REDACTED] (history major); work experience—delivery driver for [REDACTED], a warehouse associate for [REDACTED], stocker for [REDACTED] and front desk clerk for [REDACTED] motels.

(6) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when he was a pizza delivery driver for [REDACTED].

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

- (a) Chronic/extreme fatigue;
- (b) Diabetes-I;
- (c) Difficulty finding suitable medications to the diabetes;
- (d) Personality disorder;
- (e) Clinical depression;
- (f) Dizziness.

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

OBJECTIVE MEDICAL EVIDENCE (AUGUST 5, 2008)

SHRT decided that claimant is able to perform a wide range of unskilled work. SHRT did not cite any SSI Listings as the basis for its denial. SHRT denied MA-P based on 20 CFR 416.920(e). SHRT denied SDA based on PEM 261 due to claimant's ability to perform his past relevant work.

(9) Claimant lives with his father and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning (sometimes), mopping (sometimes), vacuuming and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant was hospitalized for inpatient treatment of his diabetes-I, for 5 days, in February 2009.

(10) Claimant has valid driver's license and drives an automobile approximately 8 times a month. Claimant is computer literate.

- (11) The following medical records are persuasive:

- (a) A [REDACTED] Report was reviewed.

The physician provided the following background:

Chronic Problems:

- (a) Essential hypertension;
- (b) Diabetes mellitus-I;
- (c) Hyperlipidemia;
- (d) Major depressive affective disorder, recurrent EPI.

- (b) An [REDACTED] narrative report was reviewed. The physician provided the following background:

Reasons for visit:

- (1) Diabetes follow-up.

Chronic Problems:

- (2) Essential hypertension;
- (a) Diabetes mellitus-I;
- (b) Hyperlipidemia;
- (c) Major depressive affective disorder, recurrent EPI.

Chronic problems addressed today:

- (1) Diabetes mellitus-I;
- (2) Status: Poorly controlled. Patient is walking 20 minutes/3 times/week and is taking medications regularly.

* * *

Major depressive affective disorder, recurrent—status improved.

* * *

Comments: Mood improved; still fatigued.

Hyperlipidemia—status improved.

- (c) A [REDACTED] was reviewed. The family practitioner provided the following background:

Reasons for visit: (1) Diabetes; (2) Prostatitis; (3) Hypertension.

Chronic problems addressed today: (1) Major depressive affective disorder, recurrent—status: poor control. (2) Diabetes mellitus I status—poorly controlled. Claimant is not following the prescribed diet and not exercising regularly. (3) Essential hypertension—suboptimal control. Claimant is not taking medications regularly and not following a prescribed diet.

* * *

- (d) A [REDACTED] Evaluation was reviewed. The physician provided the following background:

The psychiatrist provided the following history:

Claimant has been complaining of depression stating that this has been getting worse for the past few years. He has got a long-standing history of problems stating that the problems started in his teens. He was always somewhat on the depressed and anxious side. He states that he basically has been unable to do anything that he starts. Since high school,

he has tried to get various jobs and he states he cannot hold a job because he finds himself having no interest, not having any concentration. He states that things became markedly worse after he developed diabetes, some 4 years ago, when he was 22 years-old. He states that since then he feels that there is something else wrong with his body. He tends to be somewhat obsessive about this.

* * *

Past psychiatric history:

* * *

Claimant has never been treated as an inpatient. In 1998, he started treatment due to depression and anxiety. He was tried on various anti-depressants. He did not feel that they made any difference or improved his concentration.

* * *

The psychiatrist provided the following diagnosis:

Axis I—Major depressive disorder, recurrent, moderate;
Rule-out obsessive compulsive disorder from procrastination;
rule-out bipolar type II mood disorder (depressed type).

Axis V—58.

(12) The probative psychiatric evidence establishes an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. SHRT cited a [REDACTED] Progress Note (dated November 2007) which reported claimant has shown little effort toward his own treatment and therapy. This is basically a continuation of the assessment provided in 2006 by a psychiatrist working for the [REDACTED]. This report notes that claimant is having difficulty monitoring his medications for diabetes and for bipolar because of his chronic bipolar disorder/attention deficit disorder/depression. Based on the psychiatric reports in the record, in combination with claimant's testimony, claimant is not mentally able to perform substantial gainful activity (SGA) at this time.

(13) The probative medical evidence establishes an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions. The April 22, 2008 report provided by claimant's family physician states that claimant's diabetes-I is poorly controlled. The doctor also reports that claimant does not follow his medication instructions as closely as he should because of his depression. The current medical records do establish that claimant's physical condition has not improved to the point where he is able to perform jobs which require attention to detail and concentration on the job duties at hand.

(14) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied his application.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to a continuation of his SDA benefits based on the impairments listed in paragraph #4, above.

In particular, claimant thinks he has a severe mental impairment (major depressive disorder/obsessive compulsive disorder/bipolar type II mood disorder). Furthermore, claimant was recently hospitalized for 5 days because the medications he has been using to treat his diabetes. Claimant has been unable to adequately control his diabetic condition.

DEPARTMENT'S POSITION

The department provided the following analysis:

This is a medical review of a previously approved claim. Claimant had been approved on the basis of his mental condition. His condition has improved so that he presents better even when not complying with treatment. His mental condition may make skilled work difficult. He does have type I diabetes that is often poorly controlled. However, at this point, it would not be

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

Note: The department did not review claimant's SDA eligibility using the applicable SSI Improvement Rules. Also, the department did not obtain medical reports on claimant's recent hospitalization at [REDACTED], for a diabetic flare-up. Finally, the department did not obtain a recent psychiatric evaluation to assess claimant's current mental residual functional capacity.

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 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).

The department has the burden of proof to show by a preponderance of the medical evidence in the record that claimant's mental/physical impairments have improved to the extent that claimant is now able to perform substantial gainful activity. 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(c).

The vocational evidence of record shows claimant is not currently performing SGA. Therefore, claimant meets the Step 1 disability test.

STEP 2

The issue at Step 2 is whether the department has established improvement in claimant's mental/physical impairments to the degree that he is now able to perform SGA. **The department has the burden of proof** to show that claimant's mental/physical impairments have substantially improved to the point where claimant is now able to perform basic work activities.

MENTAL IMPAIRMENTS

The department has not established marked improvement in claimant's mental impairments. The department has not provided a DHS-49D or a DHS-49E to establish that claimant has sufficient mental residual functional capacity to work. Given claimant's plethora of claimant's mental limitations, he is currently unable to perform substantial gainful activities.

In short, the department has not shown, with recent psychiatric evidence, that claimant's mental impairments have improved to the point that claimant is now able to perform substantial gainful activity.

PHYSICAL IMPAIRMENTS

The medical evidence of record establishes that claimant has ongoing physical impairments which have not substantially improved, and still prevent substantial gainful employment. The most important of claimant's physical impairments are his chronic diabetes mellitus I and his chronic fatigue. The combination of claimant's impairments, especially his inability to obtain medications which control the sequility of his diabetic condition, preclude claimant from performing normal work activities including prolonged sitting, standing, walking and lifting.

In short, the department has not shown that claimant's physical impairments have improved to the point that claimant is now able to perform substantial gainful activity.

COMBINATION OF IMPAIRMENTS

Finally, the combination of claimant's mental impairments (bipolar/depression) and physical impairments (diabetes/chronic fatigue) totally prevent him from maintaining employment and marshalling the required work skills necessary to perform a job competently.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established marked improvement in claimant's mental and physical impairments to the extent that he is now able to perform SGA. PEM 261.

Accordingly, the department's denial of claimant's request for ongoing SDA is, hereby, REVERSED.

SO ORDERED.

/S/

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

Date Signed: September 11, 2009

Date Mailed: September 14, 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

cc:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.