

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: 2009-14424
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 7, 2009
Bay 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 May 7, 2009 in Essexville. Claimant personally appeared and testified under oath.

The department was represented by Ron Lemmon (Social Services Manager).

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) and 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 (August 13, 2008) who was denied by SHRT (March 9, 2009) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age—43; education—high school diploma; post high school—two semesters at [REDACTED] ([REDACTED] major); work experience—finish carpenter/maintenance manager for a building contractor, home improvement carpenter, and carpenter for cabinet shops.

(3) The claimant has not performed substantial gainful activity since December 2007 when he was the maintenance manager for a building contractor.

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

- (a) Status post fall from roof (1999);
- (b) Status post operations on light foot;
- (c) Status post ankle fracture (left);
- (d) Chronic right/left foot pain;
- (e) Generalized arthritis throughout the body;
- (f) Injured fingers of left hand in radial saw (2006);
- (g) Depression;
- (h) Anxiety;
- (i) Right shoulder dysfunction;
- (j) Hypertension;
- (k) Chronic arthritis in knees and hands;
- (l) Shortness of breath;
- (m) Back/neck dysfunction.

(5) SHRT evaluated claimant's medical evidence:

OBJECTIVE MEDICAL EVIDENCE (March 19, 2009)

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's eligibility using all the listings in 20 CFR 404, Subpart P, and Appendix 1. SHRT decided that claimant did not meet any of the applicable Listings. SHRT denied disability based on claimant's ability to perform normal work activities under 20 CFR 416.920(c).

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant uses a cane approximately three times a month. He does not use a walker, wheelchair, or shower stool. Claimant does not wear braces. Claimant received inpatient psychiatric services in 2008 for depression.

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

(8) Claimant attends [REDACTED] meetings daily.

(9) The following medical records are persuasive:

(a) A November 17, 2008 psychological evaluation was reviewed. The Ph.D. psychologist provided the following background.

* * *

Claimant quit high school, but got his diploma while in jail. He was placed in Special Education classes and was embarrassed and he refused to attend Special Education. He was often suspended for drinking and in one occasion, his father pulled him out of school by his hair, and his feet were not touching the ground.

* * *

Claimant has had some classes at [REDACTED].

* * *

Physical problems include dizziness from 'a swollen artery in my brain,' shoulder problems, a cyst on his knee and foot pain due to falling off the roof. He broke several bones in his foot and has had multiple surgeries as a result.

Claimant has been prescribed [REDACTED] and [REDACTED], but has been unable to get these prescriptions filled. He is taking medication for anxiety. He reports hearing things such as 'loud noises in my head.' He sees shadows walking by and denies other possible hallucinations. He averages about three or four hours of sleep per night, but will not during the day.

Claimant describes years of alcohol abuse and when drinking, he often gets in trouble.

* * *

Mental status examination:

Claimant was asked to discuss his daily activities. He states he is up at 4 a.m., watches TV for a short time, falls back to sleep and then will watch TV for most of the day. He experiences anxiety problems when he leaves the house and does not have anywhere to go anyway.

* * *

This general fund of information was within normal limits. He knew the main them of the [REDACTED] and that [REDACTED] was responsible for the [REDACTED]. He named three kinds of blood vessels in the human body.

* * *

His alcohol use has been heavy and problematic in the past. He scored in the severe range and numerous scales on the [REDACTED]. He is describing experiencing impairment in his mental functioning, social functioning and ability to maintain self control related to alcohol use. He also describes experiencing many physical symptoms associated with withdrawal. He is reporting confused and clouded thinking was as a result of alcohol abuse. Alcohol use has been a substantial problem and he is viewed as an [REDACTED].

The Ph.D. psychologist provided the following impression:

Axis I—Alcohol dependency—active use by history; major depression—rule out substance induced mood disorder; post-traumatic stress disorder—childhood abuse.

* * *

(b) A [REDACTED] report was reviewed.

The psychiatrist provided the following background:

Chief complaint and present illness:

I am depressed. I have a lot of stress in my life. I started drinking.

History of present illness:

Claimant came to see me one time in my office back in September. At that time he was given Celexa and Trazedone, at night. He stated that he has been taking the medications. He is supposed to see the therapist at List Psychological; however, he has not been compliant with the program or medications.

He stated he got some money by doing a painting job at a friend's house, almost \$700, but he blew everything in three days by drinking alcohol and gambling, even though he knows that he needs finances to move his house, to put his belongings in storage. His house is in foreclosure as of November 25 and he has no place to go. He knew everything but still could not stop drinking or gambling. He started drinking almost every day. He has been very depressed, not sleeping, isolating himself, some days he will not come out of the house and when he comes he wants to drink. He felt suicidal, wanted to kill himself because he has no other way to go. He finally came to the Emergency Room, admitted to the unit on a voluntary basis.

The psychiatrist provided the following discharge diagnoses: Axis I—Major depression. Comorbid condition—alcohol dependence, in partial remission.

Axis V/GAF—55.

(c) An [REDACTED] fall risk tool was reviewed. The physician stated that claimant is able to lie flat, move from lying to sitting, walk short distances, and do some pushing. He is not able to roll over, pull, reach, grasp, lift or carry.

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

Claimant presented with a long history of depression. He is having a lot of problems financially. He claimed that he forced on foreclosure, so he is going to lose his house in the next few weeks and he is not aware of where he can go. He feels that he cannot function anymore, and his main frustration is that he lost his driving license about eight years ago and since then he is trying to get his license

without any success. He is kind of frustrated and angry about it. He claims that his sleep averages about three to four hours a night. His appetite has not been good and he feels that he has no energy. He also presented with some obsessive compulsive behavior. For example, he will be rearranging the foods in the cupboards and also folding clothes in a particular fashion, and he does it every day. Typically, he stays at home and does not go out. He claims that his family does not talk to him, except his father. He is frustrated because he is not getting help. He currently sees a therapist at [REDACTED] and apparently, he was in crisis and went to [REDACTED], and he recommended coming here for psychiatry evaluation.

* * *

The psychiatrist provided the following diagnoses: Axis I—Major depression, comorbid condition. Alcohol abuse. Axis V/GAF—55.

(10) Claimant alleges disability based on a mental impairment: depression and anxiety. The probative psychiatric reports in the record established the following diagnoses: alcohol dependency/active use by history; major depression/rule out substance abuse, and mood disorder. Claimant provided a DHS-49D which provides an Axis I diagnosis of major depression, alcohol dependence. Axis V/GAF of 50. The DHS-49E, dated September 23, 2008 provides reports that claimant has marked limitations in 13 skills set categories. Although claimant is mentally challenged, he is currently receiving psychiatric care, and his psychiatrist has recommended that he participate with the local [REDACTED] programs. At this time, claimant is not taking advantage of all of the resources available to him to treat his mental impairments.

(11) The probative medical evidence does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant is physically challenged because he is not able to climb

ladders and work on roofs at dangerous heights. However, claimant is able to perform an extensive list of activities of daily living and he recently earned \$700 painting a friend's house.

(12) Claimant recently applied for disability benefits with the Social Security Administration. Claimant's application was denied. He filed a timely appeal. At this time, however, there is no reliable medical evidence to establish a severe, disabling physical condition that totally precludes all work activities.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA based on the impairments listed in Paragraph #4, above.

Claimant thinks he is entitled to MA-P/SDA because he needs medications to treat his physical and mental impairment. Claimant is unable to afford them on his own.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform normal work activities.

The department evaluated claimant's impairments using all of the Listings in 20 CFR 404, Subpart P, and Appendix 1.

The department denied claimant's application because the medical evidence shows a nonsevere impairment under 20 CFR 416.920.

The department also cited regulation 20 CFR 416.935 which states that persons who have a drug and alcohol history that is material to the conditions alleged as the basis of disability do not qualify for MA-P/SDA.

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).

To determine to what degree claimant's alleged mental impairments limited his 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 AND 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 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 psychiatric/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 an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all basic work activities. 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. SHRT considered the following listings: "All listings in 20 CFR 404, Subpart P."

SHRT determined that claimant does not meet any of the applicable 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 last worked as a maintenance manager for a builder. This was light/sedentary work. The medical evidence of record does not contain any evidence by a treating physician that claimant is totally unable to work.

The DHS-49E report (September 23, 2008) does state that claimant has marked limitations in 13 skill sets. However, the psychiatric evidence when taken as a whole does not establish that claimant is totally unable to work. Recently, claimant painted a friend's house and earned \$700.

Therefore, claimant meets the Step 4 disability test.

STEP #5

The issue at Step 5 is whether the claimant has a residual functional capacity (RFC) to do other work.

Claimant has the burden of proof to show by a preponderance of the medical/psychological evidence in the record that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on mental impairments (depression and severe anxiety). The psychiatric reports show the following diagnoses: Axis I—major depression, comorbid condition—alcohol dependence/partial remission. Axis V/GAF—55. A psychiatric report dated September 23, 2008 (mental residual functional capacity assessment) states that claimant has marked limitations in 13 skill sets.

Although the medical record clearly establishes that claimant is physically challenged, his ability to work is indicated by extensive number of activities of daily living he performs on a regular basis and also his recent employment as a painter.

Although claimant is physically challenged, he is able to perform substantial gainful activity based on this record. Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal.

Second, claimant alleges disability based on a combination of physical impairments (status post broken ankle, status post broken right foot, chronic foot pain, arthritis throughout his body, finger surgery to reattach severed fingers, shoulder dysfunction, high blood pressure, arthritis of the knees and hands and shortness of breath and back/neck dysfunction). None of the physicians who submitted reports stated that claimant was totally unable to work based on his physical impairments.

The [REDACTED]) from the psychiatrist which states that claimant is markedly limited in 13 skill sets cannot be given controlling weight as a [REDACTED], because the great weight of the medical evidence in the record establishes that claimant is able to perform at least sedentary work.

During the hearing, claimant testified that a major impediment to his return to work was his back/foot/neck dysfunction and pain. 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 profound and 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 work based on his combination of impairments. Claimant currently performs an extensive list of activities of daily living, has an active social life with the [REDACTED] group that he attends and recently earned \$700 painting a friend's house.

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). In this capacity, he is able to work as a ticket taker at a theater, as a parking lot attendant, and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under 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 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 28, 2009

Date Mailed: August 31, 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 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:

