

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: 2009-17691
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 16, 2009
Shiawassee 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 June 16, 2009 in Owosso. Claimant personally appeared and testified under oath.

The department was represented by Janet Schuster (Community Resource Coordinator) and Tim Kaufman (ES).

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 applicant (January 13, 2009) who was denied by SHRT (April 27, 2009) based on claimant's ability to perform a wide range of unskilled work. SHRT relied on Med-Voc Rule 202.00(H).

(2) Claimant's vocational factors are: age--42; education—high school diploma, post-high school education—attended [REDACTED] for 3 semesters [REDACTED] [REDACTED]; work experience—machine operator for [REDACTED] and beveling machine operator for a glass company.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008.

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

- (a) Chronic schizophrenia;
- (b) Learning impairment;
- (c) Needs medical insurance to pay for psychotropic medications.

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

OBJECTIVE MEDICAL EVIDENCE (APRIL 27, 2009)

SHRT decided that claimant was able to perform a wide range of unskilled work. SHRT evaluated claimant's eligibility using the SSI Listings. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on claimant's vocational profile (younger individual, high school diploma and history of unskilled work). SHRT relied on Med-Voc Rule 204.00(H)

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry

and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool.

Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

- (7) Claimant has a valid driver's license and drives an automobile on a daily basis.

Claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) A [REDACTED] was reviewed.

The physician provided the current diagnoses: Schizophrenia.

The physician reported that claimant has no physical limitations. The physician reported that claimant has some mental limitations including comprehension, memory, sustained concentration and reading/writing.

- (b) An [REDACTED] was reviewed.

The psychiatrist provided the following background.

Claimant is a 44-year-old single, white man, with a history of schizophrenia. He is doing fairly well from a psychiatric standpoint and has done well for approximately 18 years. He has been working steadily for about 9 years. He is compliant with treatment. He has a decent understanding of his illness including his break-through symptoms. His family has been relatively supportive. Prior to me treating him he had been hospitalized several times with psychotic symptoms. I have not seen the psychosis break-through significantly.

The psychiatrist provided the following Mental Status Exam: He was on time for the appointment, casually dressed and adequately groomed. He maintained good eye contact. His speech was clear and coherent. His thought process was goal directed. He denied thoughts of wanting to harm others or himself. He denied psychotic symptoms. He did not appear to be responding to internal stimuli. Cognitively, he was well intact. His affect was fairly broad. His mood he described as "Okay.". He appeared to be euthymic.

* * *

The psychiatrist provided the following impression:

Axis I—schizophrenia, undifferentiated type.

Axis V/GAF—75.

(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 thinks he has had schizophrenia for many years. He states that he is taking his medications regularly; according to doctor's orders and that they are helping him. A recent psychiatric evaluation states an Axis I diagnosis as schizophrenia, undifferentiated type and Axis V/GAF 75. Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

(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. Claimant does not allege a physical impairment as the basis for his disability claim. There are no severe physical impairments noted in the record.

(11) Claimant recently applied for SSI benefits from 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 MA-P benefits based on the impairments listed in paragraph #4, above. Claimant thinks he is entitled to medical benefits because he needs psychotropic medications to maintain his ability to work.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform a wide range of unskilled work.

The department evaluated claimant's impairments based on the SSI Listings. Claimant does not meet any of the relevant SSI Listings.

Based on claimant's vocational profile (younger individual, high school education and history of unskilled work, the department denied claimant's application based on Med-Voc Rule 204.00(H).

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).

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 Functions.**

...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 purposes. PEM 260. "Disability," as defined by MA-P 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 disabled for MA-P.

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 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 last for 12 continuous months or result in death and totally prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P, claimant must satisfy both the gainful work and 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. Claimant does not allege disability based on the Listings. However, the department assessed claimant's impairments using the Listings. 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 previously worked as a machinist for [REDACTED]

The medical evidence of record establishes that claimant is able to return to his previous job as a machinist. 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/psychological evidence in the record, that his combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on a mental impairment: Schizophrenia. The recent annual psychiatric evaluation (October 1, 2008) shows that claimant has a diagnosis of Axis I Schizophrenia, undifferentiated type. Axis V/GAF 75.

The psychiatrist notes that "claimant is doing fairly well from a psychiatric stand point and has done well for approximately 18 years. He has been working steadily for about 9 years."

* * *

Second, claimant does not allege disability based on a physical impairment.

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 and drives an automobile approximately 30 times a month. Claimant is computer literate and testified during the hearing that he was able to return to work. Also, claimant has worked occasionally mowing lawns during his unemployment.

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 for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P 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 disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: September 28, 2009

Date Mailed: September 29, 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:

