

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: 2009-21372
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2009
Genesee 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 July 29, 2009 in Flint. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED]

The department was represented by Erma Brown (FIM) and Mildred Yearby (ES).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on August 7, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge issued the decision below.

ISSUE

(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/Retro/SDA applicant (July 23, 2008) who was denied by SHRT (May 20, 2009) due to claimant's due to claimant's ability to perform unskilled sedentary work under 20 CFR 416.968(a).

(2) Claimant's vocational factors are: age—34; education—high school diploma, post-high school education—4 semesters at [REDACTED] major); work experience—van driver for [REDACTED], press operator and hi-lo operator/order filler for [REDACTED] food.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he worked as a van driver for [REDACTED].

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

- (a) HIV;
- (b) Fatigue;
- (c) Diarrhea;
- (d) Migraine headaches;
- (e) Psychoses;
- (f) Schizophrenia;
- (g) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 20, 2009)

SHRT decided that claimant was able to perform unskilled sedentary work. SHRT evaluated claimant's impairments using SSI Listing 12.01. SHRT decided claimant does not meet any of the applicable Listing. SHRT denied disability based on

claimant's ability to perform unskilled sedentary work per 20 CFR 416.968(a).

(6) Claimant lives with his parents and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (needs help), dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant received inpatient hospitalization for depression and schizophrenia in April 2008. Claimant was not hospitalized in 2009.

(7) Claimant has a valid driver's license, CDL/chauffeur's license, and drives an automobile approximately twice a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] Evaluation was reviewed.

The psychiatrist provided the following background:

Claimant is a 34 year-old, single male who came for a psychiatric evaluation as referred by [REDACTED].

* * *

Claimant complains about hearing voices, feeling paranoid and depressed since April 2, 2008. Claimant said he had been diagnosed as HIV positive for the last 2 years. He has been admitted to a psychiatric hospital once in April 2008 at [REDACTED], because he was feeling suicidal, acting strange and hearing voices and feeling paranoid. He has been in out patient treatment at [REDACTED] under the care of [REDACTED]. Claimant's sleep is poor. His appetite is okay. He has been gaining weight; however, he was not able to tell how much he has gained. He said he had crying spells. He denied having any suicidal or homicidal ideas now. He denied having any alcohol or drug problems.

* * *

HISTORY:

Claimant is a high school graduate and has 2 years of college. He has never married. He has 3 children who are all raised by their mother. Claimant worked the longest at [REDACTED] for 4 years. His last job was in maintenance 4 or 5 years and he was laid-off due to lack of work. He has never been hospitalized for medical problems. He denied having any surgery. He denied having any alcohol or drug problems. He has been arrested for not paying child support for one week. He is now on probation until 2010.

The psychiatrist provided the following additional information:

Medical Source statement: Based on today's examination, claimant is able to perform, understand and follow simple instructions and he is generally restricted to performing simple, routine, repetitive, concrete and tangible assets. Due to his schizophrenia, mild to moderate retardation and depression, he is restricted to work that involves free of superficial interaction with co-workers, supervisors and public. He is subject to relapse and I suspect the pressure of employment would be a major factor that would result in compensation on his part.

DIAGNOSES:

Axis I—Schizoaffective disorder; Axis V—40.

(9) 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. Claimant testified that he has schizophrenia, psychoses and depression. The consulting psychiatrist provided the following diagnoses: Schizoaffective disorder; current GAF—40. Claimant did not provide a DHS-49D or a DHS-49E to show 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 is diagnosed with HIV. Claimant's HIV is not a disabling condition at this time.

(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's position is summarized by [REDACTED] as follows:

Claimant is a 33 year-old male who has a 12th grade education and some college. He has a work history of driver and maintenance work. He has the following health issues: Acute psychoses, with symptoms of paranoia, suicidal ideation and delusions, depression and anxiety.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled sedentary work.

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).

To determine to what degree claimant's mental impairments affect 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, histories 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/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/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 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 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 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 a continuous period of 12 months and precludes 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 *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 alleges disability based on Listings 12.03 and 14.00(d).

SHRT evaluated claimant's eligibility based on Listing 12.01. SHRT decided that claimant does not meet the applicable SSI Listing.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a van driver for a child development agency. This was sedentary work.

The medical evidence of record does not establish that claimant's physical impairments (HIV, fatigue, diarrhea and migraine headaches) are so severe that claimant is totally unable to work due to a physical impairment. Claimant did not provide a DHS-49D or DHS-49E, or an independent medical evaluation to establish the severity of his physical impairments.

Taking the medical evidence as a whole, claimant's physical impairments, separately and in combination, do not equal a severe impairment that totally precludes all work activities.

Since claimant is able to perform unskilled sedentary work, he is able to return to his previous job as a shuttle bus driver for a daycare center.

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 psychiatric evidence of record, that his mental impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental disorder: Psychoses, schizophrenia, depression and suicidal thoughts. The consulting psychiatric evaluation (January 2, 2009) does not establish that claimant is totally unable to work based on a mental impairment. The psychiatrist, who evaluated claimant, did not state, unequivocally, that claimant is totally unable to work. Also, claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a physical impairment (HIV, fatigue, diarrhea, and migraine headaches). Claimant did not submit a physical examination report by a consulting physician to establish that he is totally unable to work based on his combination of physical impairments. Claimant did not submit a DHS-49 to establish his residual functional capacity.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant performs an extensive list of Activities of Daily Living, drives an automobile approximately twice a month, and has a pleasant

social relationship with his mother and father, with whom he lives. 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 theatre, 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, 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 MA-P/SDA disability requirements 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: March 12, 2010

Date Mailed: March 12, 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 mailing date of the rehearing decision.

JWS/sd

cc:

