

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: 2009-26587
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 27, 2009
Hillsdale 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 August 27, 2009, in Hillsdale. Claimant personally appeared and testified under oath.

The department was represented by Linda Cunningham (FIM).

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/SDA applicant (March 19, 2009) who was denied by SHRT (June 30, 2009) based on claimant's ability to perform normal work activities. SHRT relied on Med-Voc Rule 204.00(h).

(2) Claimant's vocational factors are: age--38; education--11th grade; post high school education--GED and three semesters at [REDACTED]; work experience--machine operator (three years) and millwright.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a machine operator in 2008.

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

- (a) Post-Traumatic stress syndrome;
- (b) Status post auto accident (January 2006);
- (c) Traumatic brain injury; and
- (d) Cognitive and memory impairment.

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

OBJECTIVE MEDICAL EVIDENCE (June 30, 2009)

The claimant was in an automobile accident in 2006 and was hospitalized at [REDACTED] in the traumatic brain injury program.

A 4/09 second opinion mental status showed the claimant was fully oriented, though not fully cooperative. He clearly expressed his discomfort at the beginning about talking to someone he did not know. He basically had a defensive and hostile stance about participating in an evaluation that he did not consent to. The examiner indicated that it was difficult to evaluate the validity of his self reports. The claimant explicitly denied frank paranoia; he does not believe that people are out to get him. However, he feels distinctly uncomfortable in the presence of other people. His affective tone was primarily defensive and irritable. Speech was

normal. Thought process and content appeared normal. Diagnosis was post-traumatic stress disorder (new information submitted since the MRT decision with pages not numbered).

A DHS-49D in file, dated 3/09, showed the claimant was calm, verbal, cooperative and clear. He had spontaneous speech with no loosening of association present. There was no incoherence. He had relevant thought processes. His mood was depressed and his affect was constricted (page 11). Neuropsychological testing revealed some anxiety. There was question about validity of MMPI and possibility of exaggeration or malingering. Diagnosis was mood disorder secondary to traumatic brain injury (page 12).

ANALYSIS:

The claimant has had a traumatic brain injury following an accident in 2006. In 4/09, a second opinion showed the claimant was defensive and hostile and felt distinctly uncomfortable in the presence of other people. His treating source indicated in 3/09 that his thought processes were relevant and his speech was spontaneous. There was question about the validity of his MMPI testing and possibility of exaggeration or malingering. The claimant would be able to do simple, unskilled work.

* * *

(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 does not use a cane, walker, wheelchair, or shower stool. He does not wear braces on his neck, back, arms or legs. Claimant was not hospitalized in 2008 or 2009.

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

(8) The following medical records are persuasive:

(a) An [REDACTED] Consultation was reviewed.

The psychiatrist provided the following identifying information:

Claimant is a 37-year-old single man from [REDACTED], [REDACTED], who has been in treatment with [REDACTED] since June 2007, who was referred to us by [REDACTED] and his caseworker for a second opinion consultation regarding refractory symptoms which developed following an automobile accident in 2006.

* * *

The psychiatrist provided the following history:

Claimant reports and is described in previous notes as someone who was functioning fairly well through most of his life, prior to an automobile accident on January 20, 2006. There are some indications in the record of some preexisting difficulties, reflected in the fact that he was a high school dropout and a closet alcoholic prior to the accident. However, he was socially active and working and functioning adequately.

* * *

He denies any preexisting anxiety or depressive symptoms. He notes that he was a competitive diver earlier in his life and had no fear of doing high-risk dives off of the diving board. He also had no social or performance anxiety.

* * *

Claimant was in a motor vehicle accident, which occurred while he was under the influence of alcohol on January 20, 2006. He had a period of lost consciousness and a prolonged period of amnesia. He was diagnosed with a traumatic brain injury. Following the accident, he had an episode of aggressive dyscontrol and was hospitalized for erratic and psychotic behavior in which he seemed to have auditory and visual hallucinations, paranoid ideations, irritability, and impulsive aggression. He was committed to the [REDACTED] and treated with Depakote and Risperidone.

* * *

When asked to describe his current impairing symptoms, he talked first about his discomfort being with people he does not know. He feels judged by people, worries that they are talking negatively about him, and prefers to simply stay home. He also talks with anxious distress about the way in which he lost control following his accident and became aggressive against people whom he did not want to harm. He now feels very frightened of again losing control in a

similar situation and avoids people partly to avoid the possibility of being irritated in a way that might elicit impulsive aggression.

* * *

He also endorses a very strong fear of automobiles and driving. A portion of this is associated with the possibility of losing his temper while driving and hurting somebody. He feels too frightened to take any risks in this regard. He wishes that he could become reengaged with life and would like to work, but is willing only to consider things that he can do from home because he finds the idea of engaging with the world too discomfoting and overwhelming. He says he becomes panicky in automobiles.

* * *

Social History:

As noted, the patient reportedly dropped out of high school in 10th grade, though his recollection of this is uncertain. He also seemed unclear about whether he obtained his GED. He indicates that he was successfully employed and had an adequate social life prior to his accident. He has not been married, but does have two teenage sons who live with their mothers. He has not been able to work for most of the past year. He lives close to his family and has a strong social support network through them.

Substance Abuse History:

Claimant reports that he was a hidden alcoholic prior to his motor vehicle accident. He describes in detail a day or two of excessive drinking leading up to the accident. He denies other substance abuse. He reports that since that time, he has not had any alcohol intake and describes feeling quite frightened of it.

Mental Status Examination:

The patient was fully oriented, though not fully cooperative with the examination. He clearly expressed discomfort at the beginning about talking to someone he did not know. He also had a basically defensive and hostile stance about participating in an evaluation that he had not voluntarily consented to.

* * *

However, at the same time, there is some evidence to suggest a tendency to exaggerate symptoms that highlight his level of disability. Subjectively, I was most impressed by the degree to which his overall presentation seemed driven by a sense of fearful discomfort. He clearly came across as someone who experiences the world as threatening and dangerous, with a great need to take extreme caution to protect himself. He seemed frightened both by what the world might do to him, but also by what his own internal drives and impulses might propel him to do.

* * *

Diagnosis:

It is somewhat difficult to produce a definitive formulation given the clear linkage between the presenting symptoms and the motor vehicle accident that is now three years in the past. It is also hard to be definitive given my single session exposure, his general defensiveness and reluctance about being evaluated, and concerns about potential motivation to both exaggerate and conceal symptoms.

* * *

My most important conclusion is that this patient does suffer from PTSD as a consequence of the 2006 motor vehicle accident. He has re-experiencing, hyper-arousal, and avoidance symptoms, all linked to the accident. The history provided suggests that full-blown PTSD may not have emerged until the attempt to discontinue medications in June of 2007, but it may have been present but at least partially treated prior to that time.

* * *

The consulting psychiatrist provided the following diagnoses:

Axis I: Post-Traumatic Stress Disorder;
Axis V: GAF 50 (moderate).

- (b) A March 17, 2009 Social Security Disability Decision was reviewed.

A Social Security ALJ reported the following severe symptoms: Closed head injury and memory dysfunction, cervical spondylosis and left shoulder pain. Also, a nonsevere impairment of a reported history of hearing loss.

The ALJ decided that claimant has a mild restriction in ADLs.

‘The record reflects that claimant was able to initiate and participate in activities such as cleaning, doing laundry, carrying for kids, mowing the yard, shopping and he was able to attend to his hygiene and personal care. The claimant was able to live on his own.

The ALJ decided that claimant had mild difficulties. ‘The claimant visited with his mother, visited with his neighbors and visited with his children. According to the claimant’s mother, the claimant talked on the phone and went out two to three times a month with friends.

The Administrative Law Judge decided that claimant moderate difficulties with regard to concentration, persistence or pace.

The Administrative Law Judge decided that claimant had the residual functional capacity (RFC) to perform essentially the full range of light work (20 CFR 404.1567(b)) and is able to occasionally lift twenty pounds, frequently lift ten pounds, sit, stand and/or walk about six hours in an eight-hour workday, and has an unlimited ability to push and/or pull. Further, the claimant may frequently climb ramps and stairs, frequently balance, stoop, crouch, crawl and kneel but is limited to occasional climbing ladders, ropes and scaffolds and may frequently reach overhead with the left upper extremity. He is also limited to unskilled work.

The Administrative Law Judge decided that claimant’s medically determinable impairments could reasonably expected to cause the alleged symptoms, however, claimant’s statements concerning the intensity, persistence, and limiting effects of these symptoms are not credible to the extent or inconsistency with the above residual functional capacity assessment.

The Administrative Law Judge denied claimant’s application for RSDI/SSI benefits because claimant failed to establish that he was totally unable to perform any substantial gainful activity on a sustained basis. The ALJ decided that claimant is essentially able to perform a full range of light unskilled work.

* * *

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to preclude claimant from performing all customary work functions for the required period of time. Claimant testified that he has been diagnosed with posttraumatic stress disorder. Claimant's mental status was evaluated by a University of Michigan psychiatrist (April 14, 2009) who determined that claimant had the following diagnoses: Axis I--Post-Traumatic Stress Disorder; Axis V--50 (moderate symptoms). The [REDACTED] psychiatrist did not state that claimant was totally unable to work. Also, claimant did not provide a DHS-49D or 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 did not request disability based on a severe physical impairment. At this time, the medical records do not establish any severe functional limitations arising out of claimant's physical impairments.

(11) Claimant has applied for federal disability benefits (SSI) with the Social Security Administration on two separate occasions. Social Security denied his application each time because claimant is able to do light work. Claimant filed timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform simple unskilled work.

The department decided the claimant's impairments do not meet/equal the intent or severity of a Social Security Listings.

The department denied MA-P/SDA benefits 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).

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 does 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).

The department decides eligibility based on mental impairments using the following standards:

(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).

(d) Sufficient Evidence:

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3)

project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) Chronic Mental Impairments:

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for purposes of the MA-P/SDA programs. 20 CFR 416.927(e).

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 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. Unless an impairment is expected to result in death, it must have existed, or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments that profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 criteria.

However, under the *de minimus* rule, claimant meets the severity and duration requirements.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

On March 17, 2009, the Social Security ALJ decided that claimant does not meet the SSI listings.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a machinist.

On March 17, 2009, the SSA ALJ decided that claimant is not able to return to his previous work.

Therefore, claimant meets 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 evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

On March 17, 2009, the SSA ALJ determined that claimant is able to perform the full range of light work, as defined, as claimant can occasionally lift 20 pounds, frequently lift ten pounds, sit, stand and/or walk about six hours in and eight-hour workday, and has unlimited ability to push and/or pull.

* * *

Based on the recent denial of RSDI/SSI eligibility on March 17, 2009 by the SSA ALJ, the department correctly denied claimant's MA-P/SDA application.

Consistent with this analysis, the department correctly denied claimant's MA-P/SDA application, based on Step 5 of the sequential analysis, as presented

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: April 19, 2010

Date Mailed: April 20, 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 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

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