

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: 2009-34002
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 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 October 29, 2009, in Flint. Claimant personally and testified under oath.

The department was represented by Julie Letts (ES).

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for one year (MA-P)?

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 applicant (February 27, 2009) who was denied by

SHRT (September 15, 2009) based on claimant's ability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.17 as a guide. The Record closed on October 29, 2009 and the disputed eligibility period is February 27 to September 15, 2009.

(2) Claimant's vocational factors are: age--39; education--7th grade; post high school education--none; work experience--line worker in a plastics factory, line worker in an army supply factory, grocery store stocker, meat packer, dishwasher, hotel housekeeper and cook.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when he worked as a line worker at a plastics factory.

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

- (a) Back dysfunction;
- (b) Chronic back pain;
- (c) Poor vision in right eye;
- (d) Asthma; and
- (e) Active MRS client.

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

OBJECTIVE MEDICAL EVIDENCE (September 15, 2009)

SHRT decided that claimant is able to perform unskilled light work under 20 CFR 416.967(b). SHRT evaluated claimant's impairments using SSI Listings 1.01, 3.01 and 12.01. SHRT denied disability based on Med-Voc Rule 202.17 and claimant's ability to perform unskilled light work.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), laundry (needs help) and grocery shopping (needs help). Claimant rides the [REDACTED] cart at the grocery store. Claimant does not use a cane, walker, or wheelchair. He uses a shower stool approximately three times a month. Claimant does not wear braces. Claimant did not receive in-patient hospital care in 2008 or 2009.

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

Claimant is not computer literate.

- (8) The following medical records are persuasive:

- (a) A May 22, 2009 psychological evaluation report was reviewed.

The fully-licensed Ph.D. psychologist provided the following background.

* * *

- (1) Claimant's gross motor functioning was intact with no overt physical discomfort; he was perceptually oriented and presented his ideas in a logical and coherent fashion. Speech was readily understandable with no impediments. He was able to self-disclose regarding his psychiatric, substance abuse, and legal histories and was an adequate historian.

Demonstrated affect was largely within normal limits, but claimant reported a history of depression secondary to multiple deaths in his family. He experienced suicidal feelings as recently as two months ago with a history of three attempts and two psychiatric hospitalizations in 2007 with a diagnosis of bipolar disorder. He complained of daily auditory and visual hallucinations involving his deceased parents.

* * *

Claimant is currently enrolled in an adult education program. His longest job with any single employer involved a two-year period of full-time employment at a grocery store. He worked for [REDACTED] for four months and in a small factory setting in [REDACTED] for ten months. He estimated that he had worked at some four different restaurants for periods ranging from four to six months. He was last employed last January at [REDACTED].

* * *

The Ph.D. psychologist provided the following diagnostic impressions: Axis 1--Bipolar disorder (by history) with auditory and visual hallucinations.

* * *

Axis V--45.

* * *

- (b) A March 13, 2009 psychiatric/psychological examination report (DHS-49D) was reviewed. The nurse practitioner provided the following DSM-IV diagnosis:

Axis I--Bipolar disorder I, severe with psychosis.

Axis V--46.

- (c) A March 13, 2009 mental residual functional capacity assessment (DHS-49E) was reviewed. The nurse practitioner provided the following information:

Claimant is markedly limited in two categories: (3)--the ability to understand and remember detailed instructions and (6)--the ability to maintain attention and concentration for extended periods. The nurse practitioner rated claimant as moderately limited or not significantly limited in 18 of the mental capacity subsets.

- (d) A March 9, 2009 Medical Examination Report (DHS-49) was reviewed. The nurse practitioner provided the following diagnoses: smoker, asthma, decreased vision in left [sic] eye, headaches, history of rotator cuff injury, joint pain/lumbosacral spine, obesity and erectile dysfunction.

The nurse practitioner reported the following physical limitations: claimant is able to lift/carry up to ten pounds frequently. He is able to lift/carry up to 20 pounds occasionally. Claimant has no limitations on his ability to stand/walk. Claimant has normal use of his hands/arms and normal use of his feet/legs.

- (e) A March 13, 2009 psychiatric/psychological report (DHS-49D) was reviewed. The nurse practitioner provided the following DSM IV diagnoses:

Axis I--Bipolar I, with severe psychosis.

Axis V/GAF--46.

- (f) A March 13, 2009 Mental Residual Functional Capacity Assessment (DHS-49E) was reviewed. The nurse practitioner reported the following. Claimant is markedly limited in Category III work sets (the ability to understand and remember detailed instructions. Claimant is also

markedly limited in Category VI (the ability to maintain attention and concentration for extended periods). In the other 18 skill sets, claimant is either moderately limited or insignificantly limited.

- (g) A May 22, 2009 Ph.D. psychological report was reviewed.

The Ph.D. psychologist provided the following background:

* * *

Claimant's gross motor functioning was intact with no overt physical discomfort. He was perceptually oriented and presented his ideas in a logical coherent fashion. Speech was readily understandable with no impediments. He was able to self-disclose regarding his psychiatric, substance abuse and legal histories and was an adequate historian.

* * *

The Ph.D. psychologist reported that claimant is currently enrolled in an adult education program. His longest job with any single employer involved a two-year period of full-time employment at a grocery store. Claimant worked for [REDACTED] for four months and in a small factory setting for 12 months. Claimant estimated that he had worked at some four different restaurants ranging from four to six months. Claimant was last employed last January [2008] at [REDACTED].

* * *

The Ph.D. psychologist provided the following current diagnostic impression:

Axis I--Bipolar I disorder (by history) with auditory and visual hallucinations.

* * *

Axis V--GAF--45.

NOTE: THE PH.D. PSYCHOLOGIST DID NOT STATE THAT CLAIMANT IS TOTALLY UNABLE TO WORK.

- (h) A March 9, 2009 Medical Examination Report (DHS-49) was reviewed. The nurse practitioner provided the

following current diagnoses: smoking, asthma, decreased vision, left eye [sic], headache, history of rotator cuff injury, joint pain/lumbosacral spine, obesity and erectile dysfunction.

The nurse practitioner provided the following physical limitations: claimant is able to lift ten pounds frequently and twenty pounds occasionally. Claimant has no limitations on his ability to sit or stand. Claimant has normal use of his hands/arms and normal use of his feet/legs.

(9) Claimant does not allege disability based on a mental impairment. The psychological examination provided by the Ph.D. psychologist did not conclude that claimant was totally unable to work. The DHS-49D states that claimant has an Axis I diagnoses of Bipolar I, severe with psychosis and Axis V/GAF score of 46. The mental residual functional capacity assessment shows that claimant has marked limitations in only two of 20 skill sets. Taken collectively, these reports do not establish that claimant is totally unable to work due to a mental impairment.

(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 testified that he is unable to work due to back dysfunction with chronic pain, impaired vision in his right eye, and asthma. The most recent Medical Examination Report (DHS-49) states that claimant is able to lift ten pounds frequently and twenty pounds occasionally. The nurse practitioner also reported that claimant has a normal ability to sit and walk. Claimant also has normal use of his hands/arms and feet/legs. The physical examination report provided by the nurse practitioner does not state that claimant is totally unable to work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal.

(12) Claimant is currently receiving services from the [REDACTED] department. Claimant currently receives SDA benefits under the auspices of the [REDACTED] department.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled light work.

The department evaluated claimant's impairments using the SSI Listings 1.01, 3.01 and 12.01 as a guide. The department determined that claimant does not meet any of the applicable SSI Listings.

The department denied claimant's request for disability benefits based on Med-Voc Rule 202.17 as a guide.

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 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).

A statement by a Medical Source (MSO) that an individual is “disabled” or “unable to work does not mean that disability exists for the purposes of the MA-P program. 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 purposes. PEM 260. “Disability,” as defined by MA-P 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 purposes.

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 result in death, has existed for 12 months and/or totally prevents all basic work activities. 20 CFR 416.909.

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

Under the *de minimus* rule, claimant meets the Step 2 disability test.

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 the Listings.

However, SHRT evaluated claimant's eligibility using SSI Listings 1.01 3.01, and 12.01. SHRT decided that claimant does not meet the applicable SSI 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 production worker in a plastics factory. This was light work.

The medical evidence of record establishes that claimant has low back point and rotator cuff impairment. Although claimant's impairments preclude him from heavy lifting, they do not preclude him from sedentary work. Although claimant's impairments preclude him from heavy lifting, they do not preclude him from performing light work. Since claimant is able to perform unskilled light work, he is able to return to his previous position at the plastics factory.

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 combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on mental impairment.

Second, claimant alleges disability based on his back dysfunction, right eye dysfunction, asthma and chronic back pain. Although claimant does have some lifting limitations based on his status post rotator cuff injury and chronic low back pain, the medical evidence of record does not show that claimant is totally unable to perform sedentary work.

Third, claimant testified that a major impediment to his return to work was his chronic low back secondary to low back dysfunction. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P 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 combined impairments. Currently, claimant performs a significant number of activities of daily living, has an active social life with his girlfriend and is actively working with the [REDACTED] department to obtain employment based on new work skills.

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 for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would afford claimant a sit-stand option.

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

Accordingly, the department's denial of claimant's MA-P application, for the disputed eligibility period, February 27 to October 29, 2009, is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: May 7, 2010

Date Mailed: May 10, 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

cc:

