

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: 2009-35357
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 20, 2009
Ingham 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 in Lansing on October 20, 2009.

Claimant personally appeared and testified under oath.

The department was represented by Michelle Thornburg (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/SDA applicant (May 19, 2009) who was denied by SHRT (September 23, 2009) based on claimant's ability to perform light work. SHRT relied on Med-Voc Rule 203.23 as a guide.

(2) Claimant's vocational factors are: age--51; education—high school diploma, post-high school education—attended [REDACTED] for two semesters and obtained a certificate in criminal justice; work experience—corrections officer for the State of Michigan (18 years), line worker at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since July 2007, when he was a corrections officer for the State of Michigan.

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

- (a) Diabetes;
- (b) Arthritis;
- (c) Bilateral knee pain;
- (d) Hard to sit or stand for long periods;
- (e) Depression;
- (f) Anxiety.

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

OBJECTIVE MEDICAL EVIDENCE (September 23, 2009)

The department thinks that claimant is able to perform unskilled light work. The department evaluated claimant's impairments using SSI Listing 12.04. The department decided that claimant does not meet any of the applicable SSI listings.

(6) Claimant is homeless and lives from friend to friend. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, and laundry (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant 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. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) A [REDACTED] narrative report was reviewed.

The marriage and family intern provided the following assessment:

Claimant reports that his mood is often so low that he is unable to leave the house or be productive. Claimant also reports disturbed sleep and eating patterns. Claimant attributes these symptoms in some part to his feelings of depression, but also to the amount of physical pain he is currently in, along with side effects from his medications. Claimant continues to present to therapy with depressed mood and flat affect. He moves slowly and indicates that it is painful to move. He frequently states that it was difficult to actually leave the house and come to therapy.

* * *

- (b) An April 30, 2009 Ph.D. psychological evaluation was reviewed.

The Ph.D. psychologist provided the following clinical impressions: Claimant presents as a quiet man who will talk of his circumstances when asked, but appears very guarded, sometimes to the point of appearing paranoid. He indicates that he is depressed, and struggles in many ways, especially with his physical pain. His inability to focus on the tasks at hand were a barrier to this interview, although he was going to answer questions, all details had to be sought after.

* * *

He has significant adaptive impairments in the following areas: communication, self-care, social/interpersonal skills, use of community resources, self-direction, work, leisure and health and safety.

The Ph.D. psychologist provided the following DSM diagnoses:

AXIS I—Adjustment disorder with mixed anxiety and depressed mood; alcohol dependence; rule out agoraphobia without a history of panic disorder.

AXIS V/GAF--35.

- (c) A [REDACTED] mental status exam was reviewed.

The Ph.D. psychologist provided the following background:

Claimant reported that his limitations for employment in his life at this time include: 'diabetes, arthritis, a hernia, and they say I might have something wrong with my pancreas.' Claimant reported that he worked for the State of Michigan Department of Corrections for 20 years, but left that job in January 2007. 'I got burned out. I shouldn't have resigned. I won't get my retirement until I'm 56.'

* * *

Claimant stated that he was in the regular classroom program and graduated from [REDACTED]. Over the years, he completed enough credits at [REDACTED] to obtain certification in criminal justice. He then worked for the Department of Corrections for 20 years.

* * *

The Ph.D. psychologist provided the following summary:

The results of this evaluation, to include the results of the psychological instruments and claimant's presentation throughout the evaluation, indicate he has AVERAGE capabilities to understand, retain and follow simple instructions and to perform and complete simple tasks. Claimant exhibited evidence of a severe Depressive Disorder at this time in his life, and exhibited Moderately Impaired capabilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting. It is suspected that claimant's severe Depressive Disorder would result in Moderately Impaired capability to do work-related activities.

The Ph.D. psychologist provided the following diagnostic impressions:

AXIS I—Major Depressive Disorder, recurrent; alcohol dependence, in remission.

AXIS V/GAF—53 (moderate).

(d) A [REDACTED] physical examination report was reviewed. The internist provided the following diagnoses:

- (1) Diabetes;
- (2) Numbness, bilateral leg;
- (3) Abdominal bloating;

- (4) Erectile dysfunction;
- (5) Acute bronchitis;
- (6) Asthma;
- (7) Alcohol abuse.

NOTE: The physician did not think that claimant was totally unable to work.

(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 depression and anxiety. The report provided by the consulting Ph.D. psychologist (December 29, 2008) provided the following DSM diagnoses: major depression disorder, recurrent; alcohol dependence, in remission. AXIS V/GAF—53. The Ph.D. psychologist did not state that claimant was totally unable to perform all work activities. Also, 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 reported the following physical impairments: Diabetes, arthritis, chronic knee pain, difficulty sitting or standing for long periods. The most recent physical examination report (December 11, 2008) provides the following physical diagnoses: diabetes mellitus, bilateral leg numbness; abdominal bloating; erectile dysfunction; acute bronchitis; asthma, unspecified; and alcohol abuse. The [REDACTED] physician did not state that claimant was totally unable to work. At this time, the medical records do not establish a severe functionally debilitating physical impairment which totally precludes all work activity.

(11) Claimant recently applied for federal disability benefits (SSI) with 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/SDA 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 denied MA-P/SDA benefits based on Med-Voc Rule 203.23.

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).

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

The department evaluates mental illness allegations based on 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 the 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 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/SDA 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/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

STEP 3

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

However, SHRT did review claimant's eligibility based on SSI Listing 12.04. SHRT decided that claimant does not meet any of the applicable listings.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked as a corrections officer for the State of Michigan. This was light/medium work.

The medical evidence of record establishes that claimant has chronic knee/leg pain and diabetes. Claimant has difficulty sitting and standing for long periods.

Therefore, claimant is unable to return to his previous work as a corrections officer because he is physically unable to perform the duties as required of a corrections officer.

Since claimant is unable to perform the physical duties of a corrections officer, he is unable to return to his previous work with the State of Michigan.

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/SDA purposes.

First, claimant alleges disability based on a combination of mental impairments:

depression and anxiety. The Ph.D. psychological examination requested by [REDACTED]

[REDACTED]) provides the following conclusions:

The results of this evaluation, to include the results of the psychological instruments and claimant's presentation throughout the evaluation, indicate that he has Average capabilities to understand, retain and follow simple instructions and to perform and complete simple tasks. Claimant exhibited evidence of a

severe Depressive Disorder at this time in his life, and exhibited Moderately Impaired capabilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting. It is expected that claimant's severe depressive disorder would result in Moderately Impaired capacity to do work-related activities.

The evaluation by the Ph.D. psychologist does not state that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or a DHS-49E to establish his residual mental functional capacity.

Second, claimant alleges disability based on a combination of physical impairments: diabetes, chronic arthritis, and chronic arthritic pain. The recent report provided by [REDACTED] provided the following diagnoses: diabetes mellitus, bilateral leg numbness, abdominal bloating, erectile dysfunction, acute bronchitis, asthma unspecified and alcohol abuse. The [REDACTED] internist did not report that claimant was totally unable to work. Although claimant does have limitations based on his leg impairments and chronic 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 bilateral leg pain, secondary to his arthritis. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments.

Claimant currently performs a significant number of activities of daily living, has an active social life with the friends with whom he resides and completed two years of college at [REDACTED]. Claimant has a certificate in criminal justice.

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 theatre, 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/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 9, 2010

Date Mailed: March 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 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/tg

cc:

