

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: 2009-4397
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 2009
Kalamazoo 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 March 12, 2009 in Kalamazoo. Claimant personally appeared and testified under oath.

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on March 23, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

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) The claimant established 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 (February 27, 2008) who was denied by SHRT (November 21, 2008) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age—43; education—11th grade; post high school education—GED with additional studies at [REDACTED] majoring in computer science; work experience—forklift operator.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since June 2004 when he was a forklift operator.

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

- (a) Blackouts;
- (b) Severe anxiety;
- (c) Chronic depression;
- (d) Chronic migraine headaches;
- (e) Bipolar disorder.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

SHRT cited the claimant meets the severity/duration requirements for MA-P/SDA. 20 CFR 416.909.

SHRT evaluated claimant's impairments using SSI Listing 11.03, 11.04, 12.02, 12.04, 12.06, 12.08, 1.02, and 1.04.

SHRT denied claimant's MA-P/SDA application because claimant does not meet the severity and duration requirements.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping.

(7) Claimant shops late at night to avoid large crowds at the grocery store. Claimant does not use a cane, or walker, or wheelchair, or a shower stool. He does not wear braces. Claimant did not receive inpatient hospitalization in [REDACTED] or [REDACTED].

(8) Claimant has a valid driver's license and drives an automobile approximately eight times a month. Claimant is computer literate. Claimant sees his minor child and his grandchild occasionally.

(9) The following medical records are persuasive:

(a) A [REDACTED] [REDACTED] progress note was received. Claimant's physician states:

Claimant continues receiving treatment at my office. His psychological condition is getting worse. He feels*** frustrated, depressed, anxious and overwhelmed. He relates this primarily to his current financial situation, not being able to work and be protective.

He recently has a written a letter to DHS expressing his anger and desperate situation. He expressed suicidal and homicidal ideation and was later evaluated at Borgess Hospital emergency services. He now states that he would never act on those threats.

I am still working with Andrew to help improve his depressive and anxiety symptoms. He will be seeing Julie for counseling. Claimant remains totally unemployable at present.

* * *

(b) A [REDACTED] letter was reviewed.

* * *

This letter is written on behalf of claimant, [REDACTED]. He receives outpatient counseling Services and psychiatric services via [REDACTED]. He is being treated for the following emotional disorders: major depression, severe, recurrent and anxiety disorder/severe.

On a daily basis, claimant experiences symptoms that make his depression as rated on a scale from 0 to 10 (10 being the most severe of symptoms) as reported symptoms range between 6 and 7. The level of functioning with the activities of daily living are greatly impaired. He was able to grocery shop, but only at 11 p.m. – 12 a.m. due to his fears and anxieties.

It is not evidenced or reported the ability to be employed in many areas at this time. He has not been employed since [REDACTED], when he lost his job after falling off the forklift he was driving, due to syncope episode which is anxiety-related. His level of social functioning is severely impaired and he does not have contacts outside of his immediate family members.

Thank you for taking the time to read this letter.

* * *

(c) A [REDACTED] for [REDACTED] [REDACTED] letter was reviewed.

* * *

This is to certify that claimant continues receiving treatment at my office. There has been no significant progress regarding claimant's condition, also related to his depressive and anxiety symptoms that remain severe and causing significant impairment in his ability to function personally and occupation. He has been more anxious, especially when his father is suffering from a cardiac condition that requires more care than claimant is trying to provide. Claimant's compliance with his treatment plan remains adequate, including taking his psychotropic medication and seeing his therapist [REDACTED]. His motivation to improve is adequate. He has not exhibited any behavior

that will injure himself or others. I am providing psychiatric care and services for claimant. This disability case remains pending and claimant remains solely unemployable at present.

* * *

(10) The probative psychiatric evidence, standing alone, does not establish an acute psychiatric condition expected to prevent claimant from performing all customary work functions for the required period of time. The evaluation by an M.D. at [REDACTED] [REDACTED] states that claimant has depressive anxiety symptoms that remain severe and causes a significant impairment in his ability to function, personally and occupationally. The physician further states that claimant is following his treatment plan. He is motivated to improve. He has not exhibited any behavior that will endanger himself or others. The physician thinks claimant remains totally unemployable at present. Also, there is no mental status examination in the record and claimant failed to provide a DHS-49D or 49E to establish his mental residual functional capacity. The [REDACTED] physician's report, when taken in context with the medical evidence of record, does not establish a severe mental impairment that would totally preclude all substantial gainful activity.

(11) The probative medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that he was unable to work due to syncope. However, claimant's neurological status has not been clinically evaluated by a neurologist. The record shows that claimant is able to perform normal physical activities associated with substantial gainful activity. The medical evidence does not establish a severe physical impairment that totally precludes SGA.

(12) Claimant recently applied for federal disability benefits from the Social Security Administration. His application was denied. It was not known whether claimant has filed a timely appeal.

(13) **The hearing on this matter was on a three-way telephone conference because the local office does not permit visits by claimant.**

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 states that claimant is able to perform normal work activities.

The department thinks that claimant does not establish an impairment which meets the department's severity and duration requirements.

The department evaluated claimant's eligibility based on SSI Listings 11.03, 11.04, 12.02, 12.04, 12.06, 12.08, 1.02, and 1.04. Claimant does not meet the requirements of any of the applicable listings.

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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 limit 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, 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, and 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).

The 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 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 SGA, are not disabled regardless of medical condition, age, education, and work experience. 20 CFR 416.920(b).

The vocational evidence of record shows the 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, or has existed for 12 months, thereby totally precluding all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must meet the severity and duration criteria. 20 CFR 416.920(a).

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

STEP #3

The issue at Step 3 is whether claimant meets the Listings of Impairments in the SSI regulations. SHRT considered the following SSI regulations: 11.03, 11.04, 12.02, 12.04, 12.06, 12.08, 1.02 and 1.04. 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 previously worked as a forklift operator. This was sedentary work.

Claimant's physician states that he is totally unable to work because of his psychiatric condition.

The physician noticed that claimant recently wrote a letter to DHS expressing his anger and desperate situation. He expressed suicidal and homicidal ideation and was later evaluated at [REDACTED]. The physician reports that claimant would **never** act on the threats he expressed in his letter to DHS. Based on these symptoms, claimant's physician states that claimant is totally unemployable. However, the clinical records do not include a mental status evaluation or a DHS-49D or 49E to establish a mental residual functional capacity.

There is no evidence in the medical record to establish that claimant is unable to return to work where he would not be closely associating with others.

Since claimant is able to perform at least sedentary work, that does not involve a high level of contact with other people, he is able to return to his former work and does not qualify under Step 4.

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

First, claimant alleges disability based on a mental impairment: depression, mood disorder, severe anxiety and bipolar disorder. Apart from the opinion rendered by claimant's physician, there is no independent psychiatric evidence in the record to establish that claimant is totally unable to work due to his mental impairments. As noted, claimant did not submit a DHS-49(D) or (E) mental status evaluation performed by a psychiatrist.

Second, claimant alleges disability based on blackouts. There is no medical evidence from the neurologist to establish the severity of claimant's neurological impairments.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combined impairments. Claimant currently performs an extensive list of activities of daily living, provides care for his father, and has an active social life with his minor child, and his grandchild. Claimant drives an automobile approximately eight times a month and is able to meet his basic needs. Also, occasionally he helps his father who lives upstairs. 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 theater, and as a parking lot attendant. He is also able to work as a forklift operator.

Based on this analysis, the department correctly denied the claimant's MA-P/SDA application based on Step 5 with 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 (PAM 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: May 19, 2009

Date Mailed: May 20, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the 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:

A large black rectangular redaction box covering several lines of text in the distribution list.