

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: 2009-5103
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 25, 2009
Wayne 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 February 25, 2009. Claimant personally appeared and testified under oath.

The department was represented by Marietha Allman (Medical Contact Worker).

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/retro/SDA applicant (July 7, 2008) who was denied by SHRT (December 4, 2008) based on claimant's ability to perform unskilled work.

(2) Claimant's vocational factors are: age--45; education--10th grade, post-high school education--none; work experience--DHS chore services provider for his aunt.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007, when he worked as a DHS chore services provider for his aunt.

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

- (a) Mental illness;
- (b) Diabetes;
- (c) Pancreatitis.

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

OBJECTIVE MEDICAL EVIDENCE (December 4, 2008)

SHRT decided that claimant is able to perform unskilled work. SHRT evaluated claimant's eligibility using SSI Listing 12.04, 12.06, 12.08, 12.09, 9.08, 5.05. SHRT decided that claimant does not meet any of the applicable Listings.

Using claimant's vocational profile [younger individual (age 45) with a 10th grade education and a history of unskilled work as a chore services provider], the department denied disability benefits based on claimant's failure to establish an impairment for the required severity and duration.

(6) Claimant is homeless and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant received in-patient psychiatric hospital services in January 2009 for two days.

(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 November 19, 2007 annual psychiatric evaluation was reviewed. The psychiatrist provided the following history: Claimant presented complaints included sadness, low energy, decreased appetite, insomnia, forgetfulness, short-term memory loss, poor concentration and hearing voices. Notably, the patient reported no manic symptoms, no attention deficit systems, no pain complaints, no sexual dysfunction, no thought disorder-related complaints and no post-traumatic stress syndrome complaints. No complaints of medication side effects are reported. Medications have been beneficial.

Past psychiatric history: Although symptoms pre-date this visit, no prior mental-health care was received. The patient can identify a specific event at which time the symptoms began. There was one recent suicide attempt.

SOCIAL HISTORY:

Substance abuse history includes the use of alcohol, crack cocaine and marijuana. Usage is considered tangible or intermittent, and it has been alcohol today, cocaine and cannabis 5 years ago since the last use. The longest period of abstinence from the unhealthy use of substances is less than one week.

The psychiatrist provided the following mental status exam: Positive and negative feelings of claimant's mental status were used to determine appropriate treatment options. In summary, claimant demonstrated good grooming, timeliness, orientation x4, sadness, calm behavior with a social smile, logical and coherent thought process, intact judgment, normal speech, good eye contact, no delusional thought, non-command auditory hallucinations, no obsessive or compulsive thought, below average intelligence and fair insight. After careful assessment of self-harm risk, claimant was determined to have no current suicidal thoughts, intent or plan. Regarding thoughts of harm toward others, there were no homicidal thoughts, plans or intent. Claimant was receptive to advice.

The psychiatrist provided the following assessment:

AXIS I--(1) Schizoaffective Disorder, alcohol dependence * * *
AXIS V/GAF 48

NOTE: The psychiatrist who evaluated claimant on November 19, 2007 did not state that he is totally unable to work.

* * *

(9) The probative psychological 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. The medical records show that claimant was psychiatrically hospitalized in 2009 for two days. A recent annual psychiatric evaluation provided the following diagnoses: (1) Schizoaffective disorder; (2) Alcohol dependence; AXIS V/GAF 48. Claimant did not provide a DHS -49D or a DHS-49E to establish his mental residual functional capacity. Taking the psychiatric records as a whole, the record does not establish that claimant is totally unable to work based on his mental impairments.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. The November 19, 2007 psychiatric evaluation provides the following diagnoses: diabetes Type II, hypertension, pancreatitis, and neuropathy of hands and feet. At this time, the Administrative Law Judge concludes that there is no reliable medical evidence in the record to establish a severe disabling physical condition.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform medium unskilled work. The department evaluated claimant's impairments using SSI Listing 12.04, 12.06, 12.08, 12.09, 9.08 and 5.05. Claimant does not meet any of the applicable Listings.

Based on claimant's vocational profile [younger individual (age 45), with a 10th grade education and a history of performing unskilled work as a DHS chore services provider], the department denied disability benefits based on claimant's failure to establish an impairment which meets the severity and duration requirements.

LEGAL BASE

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to

perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

To determine to what degree claimant's alleged mental impairments limit his ability to do basic work activities, 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 or Pace.**

Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible,

however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by a consideration of all factors in each particular case.

STEP 1

The issue at Step 1 is whether claimant is performing Substantial Gainful Activity (SGA). If claimant is working and is earning substantial income, he is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working, or otherwise performing Substantial Gainful Activity (SGA), are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The vocational evidence of record shows 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, or has existed for at least 12 months totally preventing all 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 evaluated claimant's eligibility based on SSI Listings 12.04, 12.06, 12.08, 12.09, 9.08 and 5.05. Claimant does not meet any of the applicable 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 DHS chore services provider for his aunt. This work was medium work.

The medical evidence of record does not establish any physical limitations that would preclude claimant from returning to his chore services occupation.

Therefore, claimant does not meet 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/psychological evidence in the record that his combination impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental disorder. The November 19, 2007 psychiatric evaluation provided the following diagnoses: AXIS I--(1) Schizoaffective disorder; (2) Alcohol Dependence. * * * AXIS V/GAF--48. Claimant did not provide a DHS-49D or

DHS-49E to establish his mental residual functional capacity. At this time, the medical record as a whole, does not establish a severe mental impairment that would preclude all work activities.

Second, claimant alleges disability based on Diabetes Type II, hypertension, pancreatitis, and neuropathy of the hands and feet. Claimant's medical diagnoses preclude him from operating machinery and working at dangerous heights, where he would be at risk of injury from falling. Claimant's current physical impairments, however, do not prevent him from performing sedentary employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on the combination of his Diabetes Type II, hypertension, pancreatitis, neuropathy, and his mental impairment.

Claimant currently performs many activities of daily living and has an active social life with his girlfriend and minor daughter.

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 physically able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter at [REDACTED]. These positions would permit claimant to have a sit/stand option during his work day.

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: July 7, 2009

Date Mailed: July 7, 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 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/cv

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