

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: 2009-88
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
Montcalm County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 17, 2009.

The D & O was delayed at the claimant's request for a second SHRT review of additional medical reports presented at the hearing (Claimant Exhibit A). After SHRT's second non-disability determination, the Administrative Law Judge made the final decision below.

ISSUE

Was disability medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On June 30, 2008, the claimant applied for SDA and was denied on August 20, 2008, per PEM 261.

(2) Claimant's vocational factors are: age 51, high school education, and past unskilled work as a gas station attendant and cash register operator; semi-skilled federal census taker by phone/door-to-door; semi-skilled general manager of a gas station.

(3) Claimant's disabling symptoms/complaints are: unable to perform basic mental work activities as defined below because of chronic poor memory due to medications, difficulty being around people, chronic anxiety, and chronic depression; unable to perform basic physical work activities as defined below because of pain in right knee from walking, shortness of breath from walking, pain in left foot from walking, intermittent weakness and pain in hands from swollen knuckles, and able to lift/carry 20 to 30 pounds for a short distance.

(4) Claimant has not performed substantial gainful work since the Summer of 2005, when he was terminated from his job.

[Mental Impairment]

(5) Medical exam on May 20, 2008 states the claimant has a current GAF of 50; that he has substance abuse and psychological/psychiatric problems; that he self-medicates with alcohol; that his alcohol consumption has been significantly reduced but his intermittent drinking would potentially abate if he were on the appropriate mood stabilizing medication (Medical Packet, pages 16-18).

(6) Medical exam on May 27, 2008 states from January 1, 2005 to the present, the claimant has marked limitations in ability to follow work rules, use judgment, function independently and extreme limitations in ability to relate to co-workers, deal with the public, interact with supervisors, deal with work stresses, and maintain attention/concentration; marked limitations in ability to understand, remember and carry out detailed but not complex job instructions, extreme limitations in complex job instructions and moderate limitations in simple job instructions; moderate limitations in ability to maintain personal appearance and extreme

limitations in ability to behave in an emotionally stable manner, relate predictably in social situations, and demonstrate reliability; and extreme limitations in restrictions of activities of daily living, difficulties in maintaining social functioning, difficulty in maintain concentration, persistence or pace (Claimant Exhibit A, pages 21 and 22).

CONCLUSIONS OF LAW

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).

Facts above are undisputed.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean 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).

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has the burden of proof to establish by a preponderance of the medical evidence in the record that his mental/physical impairment(s) meet the department's definition of disability for SDA purposes. PEM 261.

The question is whether on date of application the claimant had a severe mental/physical impairment as defined above, which had lasted or was expected to last for a continuous period of at least 90 days.

Mental Impairment

The above medicals on May 20, 2008 state the claimant's GAF of 50 and his substance abuse and his self-medication with alcohol. 50 is considered a borderline severe/non-severe impairment. [REDACTED]).

The above medicals on May 27, 2008 are conclusions about the claimant's mental limitations. The medicals state the claimant is extremely limited in ability to understand, remember and carry out detailed job-related instructions, but only moderately limited in simple job-related instructions. And the test is whether or not an applicant is without a residual functional capacity to perform simple job-related directions.

The objective medical evidence stated above does not support the claimant's severe/duration requirement.

Let's assume, on date of application, a severe mental impairment had been medically established. Then, the remaining question is whether it had lasted or was expected to last for a continuous period of at least 90 days. The objective medical evidence, on date of application, does not establish this duration requirement. Before you can be determined disabled, the severity/duration requirement must be established by the objective medical evidence.

Assume the claimant established a severe impairment, as defined above. Then the question is whether the claimant was without a residual functional capacity for his past work, as stated above.

The above medicals do not establish the claimant is without a residual functional capacity for his past work as a general manager of a gasoline station or a federal census taker by phone/door-to-door. Also, the medical evidence does not establish the claimant is without a residual functional capacity for sedentary/light type work, as defined above. The claimant

admitted at the hearing that he had a residual functional capacity for lifting/carrying up to 30 pounds for short distances.

Now, let's assume that claimant established disability as defined above. The medicals above establish that claimant is a substance/alcohol abuser.

Substance/alcohol abusers are not eligible for SDA if their substance/alcohol abuse is a contributing factor material to the finding of disability, unless it is determined that the claimant is disabled independent of the substance/alcohol abuse. PEM 261.

The claimant offered no medical proof that he meets the disability factors independently of the substance/alcohol abuse.

Lastly, the medical reports do not address the claimant's physical limitations.

Therefore, this Administrative Law Judge is not persuaded that disability has been established by a preponderance of the medical evidence.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that disability was not medically established.

Accordingly, SDA denial is UPHELD.

/s/

William A. Sundquist
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 23, 2009

Date Mailed: June 23, 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.

WAS/cv

cc:

