

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: 2009-10542  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 14, 2009  
Muskegon 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 April 14, 2009 in Muskegon. Claimant personally appeared and testified under oath.

The department was represented by Sue Faltinek (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on April 14, 2009. Claimant waived the timeliness requirement so that 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) 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 (September 23, 2008) who was denied by SHRT (January 27, 2009) based on claimant's ability to perform unskilled work. SHRT relied on Med-Voc Rule 204.00, as a guide. Claimant requests retro-MA for June, July and August 2008.

(2) Claimant's vocational factors are: age--39; education—8<sup>th</sup> grade, post-high school education--GED; work experience—cook for [REDACTED] restaurant, moulder at a foundry.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2001 when he worked as a cook at [REDACTED].

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

- (a) Bipolar-II disorder;
- (b) Polysubstance dependence;
- (c) Attention deficit disorder/with hypertension;
- (d) Post traumatic stress disorder (PTSD);
- (e) Anti personality disorder;
- (f) Chronic pain syndrome;
- (g) Depressive disorder;
- (h) Anxiety disorder;
- (i) Panic disorder;
- (j) Arthritis with chronic pain;
- (k) Bunions.

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

**OBJECTIVE MEDICAL EVIDENCE (JANUARY 27, 2009)**

SHRT evaluated claimant's impairments based on the SSI Listings and 20 CFR 407, Subpart P, Appendix. Claimant does not meet any of the listings.

SHRT determined that claimant was not disabled based on a lack of duration (20 CFR 416.909 and Vocational Rule 204.00). SHRT provided the following comments: Claimant's condition is expected to improve with treatment and abstinence from substances, so that he will be able to perform at least unskilled work if not skilled work.

\* \* \*

(6) Claimant lives alone and sleeps at various locations and at his mother's home on a rotating basis. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishes washing (somewhat), light cleaning (sometimes), laundry (sometimes) and grocery shopping (sometimes). Claimant does not use a cane, a walker, a wheelchair, or a shower stool. He does not wear braces. Claimant was not hospitalized 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/psychiatric reports are persuasive:

(a) A [REDACTED] Progress Note was reviewed.

[REDACTED] provided the following review of progress:

Claimant returns for a med evaluation from his last session with me on November 10, 2008. He has a diagnosis of bipolar-II, polysubstance dependence, ADHD, PTSD, and anti social personality disorder. He sees [REDACTED] for therapy.

Claimant reports: "I'm a wreck." He is not technically considered homeless, he states because he is staying with his mother. He went off his Xyprexa because he was having a rash. Apparently they went up on the Desyrel. Still reports all symptoms. States his mood is low. Has suicidal thoughts. Able to contract for safety. Has thoughts of harming others. Is able to contract for safety. No auditory hallucinations. Has some paranoid delusions. Inverses racing thoughts and mood swings. Energy is up and down. Appetite is okay. He states he has gained some weight since the last time he has been here. Sleep—he has middle insomnia. Anxiety is high with panic attacks. Concentration is down.

\* \* \*

Diagnoses:

Axis I—Bipolar-II disorder;

\* \* \*

Axis IV/GAF—55.

(b)

A [REDACTED] Prescriber Progress Note was reviewed.

The physician provided the following progress report: Claimant returns for mini eval from his last session with me on August 26, 2008, which was a psych eval. He has a diagnosis of bipolar-II, polysubstance dependence, ADHD, PTSD and anti social personality disorder. He sees K.F. for therapy.

Claimant reports "I am not doing that well." Depacote is causing nausea, Paxil is causing sexual dysfunction. Mood remains low, 4 out of 10; 10 being very happy. Denied suicidal ideation or auditory hallucinations. Does acknowledge wanting to strike-out at others, is able to stay away and paranoid delusions. Sleep is still disturbed with early and middle insomnia. He is only sleeping 3 or 4 hours, does not feel rested. Energy is up and down. Appetite is decreased.

\* \* \*

Diagnoses:

Axis I—Bipolar-II;

\* \* \*

Axis V/GAF—50.

(9) The probative psychiatric 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 reports depression, bipolar II disorder, polysubstance dependency, ADHD, PTSD, anti social personality disorder. Claimant thinks he is disabled for these reasons. Claimant's concerns are not corroborated by the psychiatric evidence of record. The psychiatrist states that claimant has bipolar II disorder, polysubstance dependence, attention/deficit/hyperactivity disorder, NOS and a GAF of 55. The [REDACTED] psychiatrist did not say claimant is totally unable to work due to his mental impairments. Claimant did not provide a DHS-49D or a DHS-49E to show 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 testified that he has arthritis with pain and bunions. There is no current probative medical evidence in the record to establish that claimant is totally unable to work based on his arthritis and bunions.

(11) Claimant recently applied for federal disability benefits SSI with the Social Security Administration. His application is currently pending.

## **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 work.

The department evaluated claimant's impairments based on SSI Listings 20 CFR 404, Subpart P, Appendix.

The department thinks that claimant's impairments are expected to improve with treatment and abstinence from controlled substances, so that he will be able to perform at least unskilled work if not skilled work.

**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 a mental impairment limits claimant's 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 Functions.**

**...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 that he has an impairment which is expected to result in death, has lasted for at least 12 months, and 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.

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 cook for a restaurant. This was light work.

The medical evidence of record establishes that claimant has the following mental impairments: bipolar II disorder, polysubstance dependence, attention deficit/hyperactivity disorder, NOS. Claimant has an Axis V/GAF score of 55.

None of the medical records provided by claimant establish that he is totally unable to perform his previous work as a cook.

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 a preponderance of the medical/psychological 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 mental impairment: Bipolar II, polysubstance dependence, attention/deficit/hyperactivity disorder, NOS. The psychiatric reports in the record show that claimant's mental condition is not a severe impairment. The consulting psychiatrists do not state that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on arthritis and bunions. The medical records do not establish that these conditions totally prevent claimant from performing any work.

Third, claimant testified that a major impediment to his return to work was his arthritic pain. 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 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 performs a significant number of activities of daily living, has an active social life with his mother and his girlfriend and demonstrates the ability to be resourceful and creative by taking care of himself "on the street."

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].

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: August 28, 2009

Date Mailed: August 31, 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/sd

cc:

[REDACTED]