

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: 2009-1343
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 10, 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 March 10, 2009, in Lincoln Park on March 10, 2009. Claimant personally appeared and testified under oath.

The department was represented by DeEtta Zimmer (FIS Medical Contact Specialist).

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 (June 24, 2008) who was denied by SHRT (October 23, 2008) based on claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age—44; education—post high school education—GED; work experience—auto parts inspector and sausage packer.

(3) Claimant has not performed substantial gainful activity (SGA) since 2003 when he worked as an auto parts inspector.

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

- (a) Poor concentration;
- (b) Depression;
- (c) Difficulty focusing.

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

OBJECTIVE MEDICAL EVIDENCE (██████████)

In ██████████, claimant was admitted because of chest pain (page 38). His exam was basically unremarkable. His affect was noted to be normal. There were no significant ST-T wave abnormalities on EKG. Impression was atypical chest pain (page 39).

Claimant was admitted in ██████████ due to suicidal ideation. He was noted to be irritable, angry, hypervocal and paranoid. He had apparently stopped taking his medications about a week before (page 7). On discharge, claimant was no longer irritable and he was taking his medications regularly (page 7). Diagnoses included bipolar affective disorder, polysubstance abuse (cocaine and alcohol and rule out personality disorder (page 8).

In [REDACTED], he had no focal motor deficits or sensory deficits (page 115).

Claimant was admitted again in [REDACTED] because of depression, suicidal thoughts, hearing voices, not sleeping, not eating and also being paranoid. He had once again stopped taking his medication. He had run out of medication and also began using crack cocaine and alcohol (page 29). His physical exam showed he had some pain over the thumb area (page 35). He had no leg swelling. There was tenderness over the right thumb. Range of motion (ROM) was painful. Deep tendon reflexes were equal bilaterally. He had tenderness in the lower back (page 36). He was doing well and stable at discharge (page 33).

ANALYSIS:

Claimant has a history of substance abuse. In [REDACTED], there was no indication of mental illness and no diagnosis of bipolar or schizophrenia. In [REDACTED] and [REDACTED], claimant had stopped his medications and it was specifically noted in [REDACTED] he had been using cocaine and alcohol. He had tenderness from a thumb fracture, which would not be a disabling condition. He had low back tenderness without any neurological abnormalities noted.

* * *

(6) Claimant lives in a three quarter house with two roommates. He performs the following activities of daily living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, laundry and grocery shopping. Claimant uses a cane approximately once a month. He does not use a walker, a wheelchair or a shower stool. He does not wear braces. Claimant received inpatient hospital services on several occasions. Most recently, he was hospitalized at [REDACTED] in July for depression.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A SHRT summary claimant's medical records is presented at Paragraph #5, above.

(b) A [REDACTED] [REDACTED] consultation report was reviewed.

The physician provided the following impression:

- (1) Dyslipidemia;
- (2) Gastroesophageal reflux;
- (3) Tobacco and cocaine use;
- (4) Obesity;
- (5) Bipolar disorder;
- (6) Schizophrenia;
- (7) History of injury to the thumb;
- (8) History of injury to the back;
- (9) Hypokalemia.

The physician does not report that claimant is totally unable to work.

(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. The medical records show that claimant was psychiatrically hospitalized on several occasions in [REDACTED]. It appears from the medical records that claimant's hospitalizations were triggered by claimant's failure to take his psychotropic medications as required. When claimant correctly followed his medication regimen, he appeared to be able to function adequately. A mental residual functional capacity assessment (DHS-49E) [REDACTED], [REDACTED] showed marked limitations in seven of the mental capacity categories evaluated. Taking the psychiatric reports as a whole, the record does not establish that claimant is totally unable to work based on mental impairments. Claimant would not be able to perform a high level of skilled work; he is able to perform unskilled work.

(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 [REDACTED] [REDACTED]

██████████ consultation report states claimant has the following diagnoses: dyslipidemia, gastroesophageal reflux, tobacco and cocaine use, obesity, history of injury to the thumb, history of injury to the lower back and hypokalemia. The consultative medical report does not state that claimant is totally unable to work based on a physical impairment.

(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 benefits based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has not established mental/physical impairments that significantly limit his ability to perform basic work activities. The department denied MA-P/SDA due to lack of severity and duration. The department also denied benefits based on Public Law 104-121 because claimant's drug and alcohol abuse is a material cause of his mental instability.

LEGAL BASIS

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 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 different 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 claimant as 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.

Using competent, uncontroverted medical evidence, claimant must establish an impairment which is expected to result in death or has existed for 12 months totally preventing all current 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).

However, 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 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked as an auto parts inspector. This was light, unskilled work. The medical evidence of record establishes that claimant had a thumb injury and was obese. However, these diagnoses do not prevent him from returning to his job as an auto parts inspector.

Likewise, claimant's mental impairments, are stable, and manageable, as long as he takes his psychotropic medications.

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/psychiatric 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 depression and inability to concentrate and focus. The psychiatric evidence shows that claimant is irritable, angry, hyperverbal and paranoid when he does not take his psychotropic medications as required. The department noted that claimant has a history of substance abuse and that there is no indication of mental illness and no diagnosis of bipolar disorder or schizophrenia. The record suggests that when claimant takes his

medications as ordered by his psychiatrist, that his mental status is stable. Taking the psychiatric record as a whole, claimant has not established a severe mental impairment that precludes all work activities.

Second, claimant has not established a severe physical impairment that would totally preclude all work activities. The records do note that claimant had a fractured thumb. However, this does not prevent claimant from performing sedentary employment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his history of a thumb injury in combination with his mental instability. However, the record clearly shows that when claimant takes his psychotropic medications, as prescribed, that his mental status is stable.

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 theater, as a parking lot attendant, and as a greeter at Wal-Mart.

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. Since claimant does not qualify for MA-P/SDA at Step 5, the Administrative Law Judge does not need to reach the issue of whether claimant's substance abuse is a material cause of his mental impairment.

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: May 19, 2009

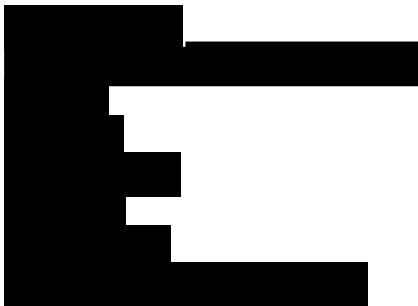
Date Mailed: May 20, 2009

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

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