

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: 2009-21902
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 9, 2009
Mecosta 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 July 9, 2009, in Big Rapids. Claimant personally appeared and testified under oath.

The department was represented by Patricia McHugh (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 mailed to the State Hearing Review Team on November 10, 2009. Claimant waived the timeliness requirements 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) 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 (January 23, 2009) who was denied by SHRT (May 27, 2009) based on claimant's ability to perform a wide range of light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—46; education—high school diploma; post high school education—received a diploma in electronics from [REDACTED]; work experience—cook at [REDACTED] and cook at a [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since March 2008 when he was a cook at a restaurant.

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

- (a) Left leg cellulitis;
- (b) Inability to stand for long periods;
- (c) Inability to sit for long periods;
- (d) Hernia dysfunction;
- (e) Bipolar disorder;
- (f) Posttraumatic stress disorder.

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

OBJECTIVE MEDICAL EVIDENCE (May 27, 2009):

On 5/2009, claimant had a limited range of motion of the left knee. Motor strength of the left leg is slightly decreased. Sensation was noted to be decreased bilaterally below the knees, more so on the left than on the right. An ultrasound of the left leg was normal.

He ambulates with a cane and has an antalgic gait. (Pages 119 and 122).

ANALYSIS:

The mental examination found claimant to be spontaneous and organized. He was friendly, yet depressed. He was oriented to person, place, and time. His memory was intact. Claimant's doctors stated his bipolar was controlled. (Page 123.) According to the activity of daily living log, he goes shopping, watches television, plays videos and plays cards.

The objective medical evidence presented does not establish a disability at the listing or equivalent level. The collective medical evidence shows that claimant is capable of performing a wide range of light work.

* * *

(6) Claimant lives with his wife and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing (needs help), cooking (sometimes), laundry (needs help), and grocery shopping (needs help). Claimant does not use a cane or a shower stool. He uses a walker on a daily basis. He uses a wheelchair approximately eight times a month. He wears a leg brace on a daily basis. Claimant did not receive inpatient hospital care in 2008. In 2009, he received inpatient hospital care for cellulitis.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is computer literate.

(8) The following medical reports are persuasive:

(a) A [REDACTED] Consultation report was reviewed. The physician provided the following background:

As you know, claimant is a 44-year-old male with a history of arthritis and status post numerous orthopedic surgeries, as well as left lower extremity DVT (deep vein thrombosis), who presents with a 25-year-history of left lower extremity constant pain distally from his knees. He

reports that his pain is constant and specifically involves the area around his knees. He also complains of sensory changes such as numbness from his left knee distally and cold sensation in his foot. He also complains of atrophy in his left thigh and has a 20-year history of associated left lower extremity and edema. He is currently using a cane for ambulation and states that he has not had any recent falls. His symptoms started approximately 25 years ago, and he had a gradual onset 25 years ago, but his symptoms have not progressively worsened. He has had numerous studies in the past including an MRI in the T-spine that showed degenerative changes but otherwise, was unremarkable.

He specifically denied that any focal weaknesses, bowel or bladder symptoms. He also denies any dysarthria or dysphagia.

PAST MEDICAL HISTORY:

- (1) Arthritis;
- (2) Bipolar disease;
- (3) Alcohol abuse;
- (4) Posttraumatic stress disorder;
- (5) Phlebitis;
- (6) Multiple deep vein thrombosis in left lower extremity.

MEDICAL DECISION MAKING:

Claimant is a 44-year-old male with a history of multiple orthopedic surgeries in left lower extremity DVTs, who presents with chronic left lower extremity pain that had been stable over a number of years. His neurological exam reveals weakness in the distal muscles of the left lower extremities accompanied with decreased sensation. His symptoms could represent radiculopathy versus involvement of the peroneal or sciatic nerve.

* * *

NOTE: The consulting physician did not state the claimant is totally unable to work.

(b) A [REDACTED] was reviewed.

The Ph.D. psychologist provided the following mental status examination:

* * *

Claimant was alert, cooperative and answered questions without difficulty. He was clear in sensory and place. No particular memory concerns. With regard to recent overdosing on Tylenol tablets, claimant did not feel that this was an attempt to end his life, but mainly because he was 'feeling low.' He admitted that he had not been taking his Lithium 'for a few years.' He stated that there would be no reason to end his life and that he had a decent job, nice house and a good family with two stepchildren, ages 14 and 18 whom he had a good relationship with. Claimant did indicate that approximately 12 to 13 years ago, he took approximately ten prescribed medication tablets. He was feeling 'stressed.' He stated that on occasion he does have some apparent PTSD as a result of his serving in [REDACTED] when he was 18 years of age for a period of six months. He described what sounds like thought intrusions, startled responses, social isolation, general suspicious nature, as well as occasional nightmares.

* * *

There was no evidence of psychotic condition evident during this assessment.

The psychologist provided the following diagnostic impression:

Axis I:

- (a) Bipolar disorder, depressed;
- (b) Posttraumatic stress disorder (PTSD).

Axis V/GAF—45.

(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 testified that he has bipolar disorder and PTSD. A psychiatric report from the [REDACTED] provided the following diagnosis: (a) Axis I (bipolar disorder, depressed); (b) PTSD. Axis V/GAF—45. Ph.D. psychologist did not state that

claimant was totally unable to work. In addition, claimant did not provide a DHS-49D or DHS-49E to establish 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 reports left leg cellulitis, hernia dysfunction, and generalized pain in the lower legs.

(11) A February 26, 2009 Medical Examination Report provides the following current diagnoses: Left leg swelling (etiology uncertain); status post trauma in the military; PTSD, bipolar disorder. The physician states that claimant is totally unable to do any lifting and is able to sit less than six hours in an eight-hour day. Claimant is able to use his hands/arms normally. He is able to use his right leg normally. The physician states that claimant is not able to perform sedentary work. However, this MSO (medical source opinion) will not be given controlling weight because of its contrary to the great weight of the evidence in the record.

(12) Recently, claimant applied for federal disability benefits from Social Security Administration. His application is currently pending before Social Security.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The medical evidence of record indicates that claimant retains the capacity to perform a wide range of light work.

Using Med-Voc Rule 202.20 as a guide, the department denied MA-P based on claimant's vocational profile [younger individual, high school graduate and unskilled work history].

MA-P was denied because claimant is able to perform unskilled light work.

SDA was denied using PEM 261 because the nature and severity of claimant's impairments would not preclude all light work activities for 90 days.

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 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).

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 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 earning substantial income, he is not disabled for MA-P/SDA purposes.

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, has existed for at least 12 months, and totally prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the 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 the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings. SHRT evaluated claimant's impairments using the Listing and determined that 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 last worked as a cook for a local restaurant. This was medium work.

Claimant's restaurant work required him to stand continuously for the entire shift and to lift medium/heavy objects.

Since claimant is no longer able to stand for extended periods of time and no longer able to do heavy lifting, he is unable to return to his previous work as a cook.

Therefore, claimant meets 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 evidence in the record that his combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant does not allege disability based on bipolar disorder and posttraumatic stress disorder. The May 16, 2001 psychological evaluation provides the following diagnoses:

- (a) Axis I (bipolar disorder, depressed);
- (b) Posttraumatic stress disorder.
- (c) Axis V/GAF score is 45.

Ph.D. psychologist did not state that claimant was totally unable to work. Also, claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based on a combination of physical impairments: Left leg cellulitis, left leg pain, and hernia dysfunction. A recent medical examination report (February 26, 2009) provides the following diagnoses: left leg swelling, etiology uncertain; status post trauma in the military. PTSD and bipolar disorder. The physician who provided the February 26, 2009 report states that claimant was totally disabled. However, this MSO opinion will not be given controlling weight because it is contrary to the great weight of the medical evidence in the record.

Third, claimant testified that a major impairment to his return to work was his bilateral left swelling/pain. Unfortunately, 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 profound and 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 (ADLs), has an active social life with his wife, and is computer literate.

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 theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would give claimant a sit/stand option.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under 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: November 18, 2009

Date Mailed: November 18, 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:

