

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: 2009-24533
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 4, 2009
Lapeer 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 in Lapeer on August 4, 2009. Claimant personally appeared and testified under oath.

The department was represented by Dianne Williams (Lead Worker).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on August 4, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, 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 SDA applicant (January 27, 2009) who was denied by SHRT (June 11, 2009) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.0, as a guide.

(2) Claimant's vocational factors are: age—25; education—high school diploma; post-high school education—took welding classes in high school; work experience—welder at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when he was a welder.

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

- (a) Seizures;
- (b) Seizure medications cause nausea;
- (c) Mood swings;
- (d) Bipolar disorder;
- (e) Status post recent psychiatric hospitalization.
- (f) Anxiety.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 11, 2009)

SHRT decided that claimant was able to perform unskilled light work under 24 CFR 416.967(a). SHRT evaluated claimant's eligibility using all the SSI Listings at 20 CFR 404, Subpart P, Appendix. SHRT decided claimant does not meet the applicable Listing. SHRT denied disability based on Med-Voc Rule 202.20.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant received inpatient psychiatric hospital care in 2008 for treatment of his seizures and Bipolar condition. Claimant did not receive inpatient hospital care in 2009.

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

- (8) The following medical records are persuasive:

- (a) An August 3, 2009 narrative report from claimant's treating physician states the following:

No driving, engaging in hazardous activities, no use of heavy machinery for a minimum of 6 months, provided the patient remain seizure free.

* * *

The physician did not state that claimant was totally unable to work.

- (b) A December 8, 2008 narrative report from claimant's treating physician was reviewed.

The physician provided the following background:

Claimant presents for a follow-up accompanied by a friend and reports he has had 3 seizures since August. The seizures are described as going into a trace for a few minutes with biting his tongue. He denies any loss of bowel or bladder control. He also vomits with the seizures. The seizures typically occur the first thing in the morning or whiled his is sleeping. Electroencephalogram was abnormal revealing low to medium voltage sharp and slow wave curves which are consistent with cerebral dysfunction and cortical irritation, and etileptogenic tendency from both hemispheres. He has been taking Depakote, this was increased by [REDACTED].

The physician provided the following assessment:

- (1) Generalized tonic-clonic seizures;
- (2) Chronic daily headaches.

* * *

(c) An [REDACTED] was reviewed.

The PhD psychologist provided the following history:

Complaints and Symptoms:

Claimant reported he has seizure and Bipolar Disorder. He says he has had seizures as recently as last Friday. He says he gets angry frequently. He said he was irritated that we did not have a place for him to sign-in today (and he did not appreciate the sign telling him that he did not need to sign-in). He said he does not have much patience.

Personal History:

* * *

Claimant denied any history or problems with alcohol or substance abuse. Claimant most recently worked August 11, 2008 as a welder. He said he has done welding since age 16. He said he always worked until he had the seizure. He then said he was laid-off, but could not return to work because of his seizures.

* * *

ACTIVITIES:

Claimant currently resides alone. Claimant spends the days as follows: Pick-up the yard, video games, cleans the house, whatever I can outside; I have 2 acres of land. Claimant is able to complete basic household chores. Claimant is independent in self-care and personal hygiene. Claimant reported being able to grocery shop independently. Claimant reported to be able to pay bills and count money. Claimant did not incur any income. Claimant is not able to drive because of his seizures.

The PhD psychologist provided the additional information:

It was my impression that claimant's mental abilities to understand, remember and carry-out instructions are not impaired. Claimant's ability to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace are mildly impaired.

Overall, based on today's exam and all the information available to me at this time, it is my impression that claimant's psychological condition would **mildly** impair his ability to perform work related activities.

The PhD psychologist provided the following DSM Diagnoses:

Axis I—Bipolar disorder, NOS; Axis V—GAF/61.

* * *

(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. Claimant testified that he had been diagnosed with Bipolar disorder. The PhD consulting psychologist provided the following diagnoses: Axis I—Bipolar disorder, NOS; Axis V/GAF—61. The PhD psychologist stated that claimant's mental abilities to understand, remember and carry-out instructions were not impaired. Claimant's ability to respond appropriate to co-workers and to adapt to change and stress are mildly impaired.

Also, 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. While it is true that claimant's physician has prohibited him from driving and working around dangerous machinery for 6 months, due to his seizure condition, the treating physician did not state claimant is totally unable to work.

(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 she is entitled to SDA based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled light work.

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

The department thinks that the medical evidence of record shows claimant retains the capacity to perform a wide range of light unskilled work. However, he should avoid working around unprotected heights, unprotected machinery and operation of moving vehicles.

The department denied SDA based on PEM 260/261 because the nature and severity of claimant's impairments do not preclude all light work activity for 90 days.

* * *

LEGAL BASE

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.

To determine to what degree claimant's 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, histories 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 combined impairments meet the department's definition of disability for SDA purposes. PEM 261. "Disability," as defined by 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 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, has existed for a continuous period of 12 months and prevents all basic work activities 20 CFR 416.909.

Also, to qualify for SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is *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. SHRT reviewed all the applicable Listings and decided claimant does not qualify.

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 welder. This was light work.

The medical evidence in the record establishes that claimant is able to do light work. Because of claimant's seizure disorder, claimant's treating physician has prohibited him from working around dangerous machinery. The acetylene torch which welders use is a dangerous instrumentality, and claimant is not able to perform work as a welder for that reason.

Since claimant is unable to return to his previous work, he 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 the medical evidence in the record, that his combined impairments meet the department's definition of disability for SDA purposes.

First, claimant alleges disability based on a mental impairment: Mood swings and Bipolar disorder. The report from the consulting psychologist provides the following diagnoses: Bipolar disorder/NOS; Axis V/GAF—61. The consulting psychologist stated that claimant was mildly impaired from performing normal work activities. The consulting psychologist did state that claimant is totally unable to work. Also, claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant alleges disability based a physical impairment: Seizures. Claimant's physician has instructed claimant not to engage in hazardous activities or to use heavy machinery and prevented him from driving for 6 months. However, the physician did not totally disqualify claimant from all work activities.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant currently lives alone and performs an extensive list of Activities of Daily Living. Also, he is computer literate. The fact that claimant

is unable to drive does not prevent him from working. He is able to arrange for transportation with a local shuttle bus or with friends/acquaintances.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled light work (SGA). In this capacity, he is able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's 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 SDA disability requirements under PEM 261.

Accordingly, the department's denial of claimant's SDA application is, hereby,
AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 19, 2010

Date Mailed: March 19, 2010

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.

2009-24533/JWS

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:

