

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: 2009-24544
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 30, 2009
Genesee 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 Flint on July 30, 2009. Claimant personally appeared and testified under oath.

The department was represented by Charlene Comstock (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

- (1) Did claimant establish a severe 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 (November 10, 2008) who was denied by SHRT (June 16, 2009) due to claimant's failure ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.21 as a guide.

(2) Claimant's vocational factors are: age—52; education—high school diploma (special education classes); post-high school education—none; work experience—chore services provider for his mother, assembly line worked for [REDACTED] and auto parts company, grocery bagger for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he was an assembly line worker at a parts factory.

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

- (a) Slow learner;
- (b) Reading problems;
- (c) Depression;
- (d) Hears voices;
- (e) High blood pressure.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 16, 2009)

Claimant stated the depression started after the death of his mother in 9/2008. His mental examination reported to have in contact with reality. His speech was unimpaired and stream of mental activity was spontaneous and organized. His affect was appropriate to his mood. His emotional state appeared normal. He smiled and laughed throughout the examination.

ANALYSIS:

The objective medical presented does not establish a disability at the Listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of simple, unskilled, medium work.

* * *

(6) Claimant lives with his sister and brother-in-law and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, vacuuming (sometimes), laundry and grocery shopping (sometimes). Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant did not receive inpatient hospitalized in 2008 or 2009.

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

(8) The following medical records are persuasive:

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

The PhD psychologist provided the following background information:

* * *

Claimant's alleged impairments were reported as follows: A learning disability, reading problems and depression. Claimant agreed that he has always had learning problems. He said he was put in special education in the 6th grade.

* * *

The PhD psychologist provided the following interpretation of the [REDACTED] results.

* * *

It was at this point that I administered the [REDACTED] [REDACTED] due to my impression that claimant was under-representing his abilities. Claimant obtained an E-Score of 32, which is highly suggestive of under-representation of ability, and found in persons engaging in a high degree of embellishment or symptom magnification.

* * *

The PhD psychologist provided the following testing summary:

Claimant is a 52 year-old male. It was my strong impression that claimant was under-represented his abilities at times during the [REDACTED]. The intelligence scores of obtained today are lowered as a result. I would estimate claimant's cognitive abilities are in the borderline range.

* * *

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

The PhD psychologist provided the following history:

* * *

Claimant brought a letter from his case manager, [REDACTED] to his appointment. In the letter, [REDACTED] stated that on the day she evaluated claimant ([REDACTED]), he presented with "a sad, flat, anxious, angry, constricted and labile affect." At that time, claimant reported such symptoms as, a "short attention span, mood swings, mind racing and wandering and hallucinations." Claimant was given a diagnosis of schizoaffective disorder.

* * *

The PhD psychologist provided the following personal history:

Claimant most recently worked for the State caring for his mother from 2006 until her death in September 2008. Claimant worked prior to that for [REDACTED] ([REDACTED]) doing assembly. Claimant said he was let go, but never told why. Claimant's longest employment was for an auto supplier from mid-1999 until April 2000. He again was let go with no explanation. Claimant worked for [REDACTED] in [REDACTED] as a bagger in 2000. That job ended after about 4 months he was fired due to transportation problems.

* * *

The PhD psychologist provided the following summary of claimant's daily functioning/activities.

Claimant currently resides with his sister and her boyfriend. Claimant generally spends the day as follows: “Get up and usually jump in the shower. I watch [REDACTED], and a little of [REDACTED]. Get something to eat. I walk my sister’s dog.” Claimant is able to complete basic household activities. He said, “I am not as well equipped as I want to be.” Claimant is independent in self care and personal hygiene. Claimant reported being able to grocery shop independently. Claimant is able to pay his bills and count money. Claimant is currently being supported by Food Stamps. Claimant is able to drive a car and have a license.

* * *

The PhD psychologist provided the following Mental Status description/mental trend/thought content:

There was no significant evidence of delusions, persecutions, obsessions, thoughts controlled by others, or other equal powers. Claimant said, “The voices are always saying bad things. It causes me to worry about stuff.” He said he started hearing voices from inside and out of his head about 8 months ago. He hears “mostly male voices”. He said, “I hear one every so often that tells me I can’t do stuff and it gives me low self esteem.”

* * *

The PhD psychologist provided the following additional information:

It is my impression that claimant’s mental abilities to understand, remember, and carry-out instructions is moderately impaired. Claimant’s abilities to respond appropriately to coworkers and supervision and adapt to change and stress in the workplace are moderately impaired. Overall, based on today’s exam and all the information at this time, it is my impression that claimant’s psychological condition would moderately impair his ability to perform work related activities.

The PhD psychologist provided the following DSM diagnoses:

- I. Axis I—Schizoaffective disorder, Bipolar type;
- II Axis II—Borderline intellectual functioning.

- III. High blood pressure;
- IV. Death of mother, financial;
- V. Axis V/GAF—55.

- (c) A 21, 2009 Psychiatric/Psychological Examination Report (DHS-49D) was reviewed. The psychiatrist provided the following DSM diagnoses: Axis I—dysphemia; schizoaffective disorder. Axis V/GAF—45-50.
- (d) A January 21, 2009 Mental Residual Functional Capacity Assessment/DHS 49E was reviewed. The psychiatrist reported claimant to be markedly limited the following mental skill sets: 3, 4, 5, 6, 9, 17, and 20.
- (e) A December 2, 2008 Medical Needs Form (DHS-54A) was reviewed. The physician provided the following diagnoses: hypertension, hepatitis C and alcoholism.

The physician stated that claimant has a medical need for assistance with personal care activities, but did not list any.

The physician stated that claimant was unable to perform his usual occupation; he did not state that claimant was unable to work at any job.

- (f) A December 2, 2008 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: (illegible). The physician reported the following physical limitations. Claimant is able to lift less than 10 pounds frequently. He is able to lift up to 10 pounds occasionally. Claimant is able to stand/walk less than 2 hours in an 8 hour day. Claimant is able to use his hands/arms normally. There is no information on claimant's ability to use his hands, his feet/legs.

* * *

(9) The probative psychiatric/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 the following mental impairments prevent him from performing SDA: slow learner, reading problems, depression,

hears voices. The 9/16/2009 psychiatric/psychological report opined that claimant's mental abilities to understand and remember and carry out instructions are moderately impaired; his abilities to respond appropriately to coworkers and supervision, and to adapt to change and stress in the workplace are moderately impaired. The PhD psychologist opined that claimant's psychological moderately impair his ability to perform work related activities. The consulting psychologist provided the following diagnoses: I—schizoaffective disorder, bipolar type; Axis V/GAF—55. The psychological reports do not state claimant is totally unable to work.

(10) Claimant does not allege disability based on a physical impairment. 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 the treating physician reports that claimant is unable to return to his usual occupation, due to lifting and standing restrictions, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record.

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

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform a wide range of unskilled medium work.

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

Using Med-Voc Rule 203.21 as a guide, and considering claimant's vocational profile (approaching advanced age (52 years-old), with a high school education and a history of unskilled work) the department denied MA-P.

The department denied SDA using PEM 261, because the nature and severity of claimant's impairments would not preclude simple unskilled medium work for at least 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 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 mental/physical impairments meet the department's definition of disability for MA-P purposes. PEM 260/261. "Disability," as defined by MA-P 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 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 CFR416.99.

Also, to qualify for MA-P, 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. However, SHRT evaluated claimant's eligibility using SSI Listings and decided claimant does not meet the appropriate SSI 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 previously worked as a chore services provider for his mother under the aegis of the Department of Human Services. This was medium work.

Except for the Medical Source Opinion (MSO) provided by the claimant's treating physician, there is no evidence that claimant is unable to return to his work as a chore services provider.

However, the Medical Source Opinion (MSO) is not supported by the great weight of the evidence in the record, and consequently it will not be given controlling weight. 20 CFR 416.927(c) and (d).

Since claimant is able to return to his previous work as a chore services provider, he 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 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 combination of mental impairments: slow learner, reading problems, depression, hears voices. The psychological evidence in the record establishes that claimant is able to perform medium work. Although the psychologist reports that claimant is moderately impaired with respect to his ability to understand, remember, and carry out instructions, respond appropriately to co-workers with supervision and adapt to change and stress of the workplace, the psychiatrist opined that claimant is able to work despite this moderate impairment. The psychiatrist who provided the DHS-49D and E came to a different conclusion.

Second, claimant does not allege disability based on a physical impairment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of impairments. Claimant currently performs many Activities of Daily Living, has an active social life with his sister and brother-in-law. Claimant drives an automobile approximately twice a month.

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/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]. Claimant is also able to work as a grocery store bagger.

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.

Claimant is not eligible for disability benefits because he did not answer the psychological exam questions honestly and in good faith. See exam results dated March 6, 2009.

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: March 12, 2010

Date Mailed: March 15, 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.

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.

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