

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: 2009-2584
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 13, 2009
Otsego 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, an in-person hearing was held on October 13, 2009 in Gaylord. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Dale Terryberry (Program Manager) and Michelle Hagerman (ES).

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team on March 15, 2010. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the ALJ issued the decision below.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

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 applicant (August 26, 2008) who was denied by SHRT (November 6, 2008) based on claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age--45; education--high school diploma; post high school education--served as a bowsman's mate/deckhand in the [REDACTED] for four years; work experience--warehouse manager for [REDACTED], maintenance manager for [REDACTED], and desk clerk for hardware store.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2006 when he was a warehouse manager.

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

- (a) Bipolar disorder;
- (b) Severe anxiety;
- (c) Severe depression.

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

OBJECTIVE MEDICAL EVIDENCE (November 6, 2008):

The mental status exam dated 7/2008 showed claimant reported being hospitalized in 1990 and 1992 for suicidal thoughts and bipolar disorder (page 55). On exam, he had good eye contact. His speech was normal (page 56). His affect was flattened and his mood was subdued, anxious and depressed. Thought processes were relevant and spontaneous. There was no normal thought disorder. He had average intellectual functioning (page 57). Diagnoses included major depressive disorder--recurrent,

moderate, anxiety disorder NOS, alcohol abuse and cannabis dependence (page 60).

Claimant had a history of contrast--enhancing left renal mass. On 9/28/2008, claimant underwent open left partial nephrectomy. His postoperative course was genuinely uneventful. His pathology revealed clear renal cell carcinoma, Fuhrman Grade 2/4. There was no angiolyphatic invasion noted and all margins were negative. The long-term prognosis was excellent (page 30).

ANALYSIS:

Claimant had an open left partial nephrectomy for clear renal cell carcinoma. There was no angiolyphatic invasion and all margins were negative. His long-term prognosis is excellent. The claimant would have been unable to work for a recovery period after his surgery. He also has a history of substance abuse and depression. However, thought processes were relevant and spontaneous and there was no formal thought disorder.

* * *

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair or shower stool. He does not wear braces. Claimant was hospitalized in 2008 for kidney cancer surgery. He was not hospitalized in 2009. Claimant's kidney cancer treatment has been successful.

(7) Claimant has a valid driver's license and drives an automobile approximately six times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

A [REDACTED]
Assessment was reviewed.

The Ph.D. psychologist's evaluation provides the following:

Presenting Concerns:

Claimant is currently reporting depressed mood and severe anxiety. He has been treated for this in the past, and is currently followed by his family doctor with medication. He does not feel that his symptoms are being managed. He reports that when he was working with [REDACTED], last time, he was scheduled to see the psychiatrist, and he ended up moving down to Shelby Township, so he could not keep that appointment. He is currently requesting to see the psychiatrist again.

Claimant reports that he has had very distinct ups and downs with his mood and energy in the past. Currently, and for the past three months, he has been depressed. His sleep has been very poor for the past few months. He reports that when he goes to bed, his mind races, and he gets anxious, and it is difficult for him to wind down. He may sleep 45 minutes to 1-1/2 hours at a time, and then wake up again. He does this throughout the night. He reports that his appetite has been down and believes that he has lost between 5 and 10 pounds within the last two weeks. On rare occasions, he may eat a lot. He reports that his energy has been down, rating it a 3 out of a 10 point scale. He does not ride his mountain bike anymore, which is something that he loved to do. He does not listen to his music anymore. He has lost interest in things that used to bring him joy. He reports that he hears his own voice in his head; sometimes it is positive and sometimes negative. He is not reporting any actual v/hallucinations. No formal thought disorder.

* * *

The Ph.D. psychiatrist provided the following diagnoses:

Axis I--major depressive disorder, recurrent, moderate; anxiety disorder/NOS; alcohol abuse; cannabis dependence.

* * *

Axis V/GAF score--53 (moderate symptoms or difficulty in functioning).

* * *

NOTE: Ph.D. psychologist did not state that claimant is totally unable to work.

- (9) Claimant alleges disability based on a combination of mental impairments:

Bipolar disorder, severe anxiety and severe depression. The recent [REDACTED]

psychiatric assessment (July 11, 2008) provides the following diagnoses: major depressive disorder, recurrent and moderate, anxiety disorder/NOS, alcohol abuse and cannabis dependence.

The [REDACTED] evaluator did not state that the claimant was totally unable to work based on his mental impairments. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.

(10) Claimant alleges disability based on his recent diagnosis of kidney cancer. However, SHRT noted that claimant recently underwent successful kidney cancer surgery and there was no angiolymphatic invasion and all margins were negative. Claimant's long-term prognosis is excellent. Although claimant would have been unable to work for a short recovery period, there is no evidence that claimant's status post kidney cancer surgery totally precludes all employment at this time.

(11) Claimant has not applied for SSI benefits from the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform normal work activities.

The department evaluated claimant's impairments using the SSI Listings.

The department denied benefits based on Public Law 104-21 (materiality of drug and alcohol abuse) and because claimant failed to establish an impairment which meets the department's severity and duration requirements.

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).

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).

The department decides eligibility issues based on mental impairments using the following standards:

(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).

(d) **Sufficient Evidence.**

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) **Chronic Mental Impairments.**

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for the purposes of the MA-P program.

20 CFR 416.927(e).

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. “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 disabled for MA-P 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 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 12 months and/or totally prevents all basic work activities. 20 CFR 416.909.

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

Under the *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 a Listing. However, SHRT did review claimant's eligibility using the Listings. Claimant does not meet any of the applicable 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 warehouse manager for [REDACTED]. The evidence of record does not establish that claimant is mentally or physically unable to return to his work as a warehouse manager.

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

First, claimant alleges disability based on a combination of mental impairments: Bipolar disorder, severe anxiety disorder and severe depression. The report submitted by the [REDACTED] psychologist provided the following diagnoses: Major depressive disorder, recurrent/moderate, anxiety disorder NOS, alcohol abuse and cannabis dependence. The [REDACTED] Axis V/GAF score is 53 which shows moderate symptoms or moderate difficulty in functioning. The Ph.D. psychologist who evaluated claimant did not state that he is totally unable to work due to his mental impairments. Also, claimant did not submit a DHS-49D and DHS-49E to establish his residual functional ability.

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 performs an extensive list of Activities of Daily Living, has an active social life with his mother and is able to drive an automobile six times a month. Also, claimant 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 at 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 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 disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby,
AFFIRMED.

SO ORDERED.

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

Date Signed: April 4, 2010

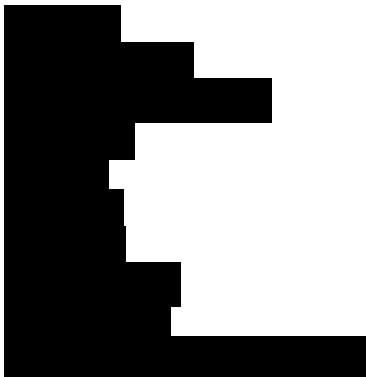
Date Mailed: April 6, 2010

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 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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