

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: 2009-26560
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 13, 2009
Monroe 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 Monroe on August 13, 2009. Claimant personally appeared and testified under oath.

The department was represented by Terry Prekert (Program Manager).

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)?

(2) Did claimant establish a severe physical impairment expected to preclude him 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 (February 5, 2009) who was denied by SHRT (June 30, 2009) based on Med-Voc Rule 204.00H.

(2) Claimant's vocational factors are: age—22; education—high school diploma, post-high school education—none; work experience—unloaded semi trucks using an electronic hi-lo, worked as a packer for a chair company and dishwasher at [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since April 2009 when he worked for [REDACTED] unloading semi trucks.

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

- (a) Depression;
- (b) Bipolar Disorder;
- (c) Schizophrenia;
- (d) Anxiety Disorder.

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

OBJECTIVE MEDICAL EVIDENCE

Claimant was admitted in 7/2008 due to mood instability. He admitted to daily marijuana abuse. He was very involved in self cutting and sadomasochistic exhibitionist behaviors (page 19).

Claimant was admitted in again in 8/2008 with suicidal feelings. The diagnosis included bipolar affective disorder, sadomasochism and poly substance abuse (page 21).

A Mental Status Examination dated 3/2009; showed claimant was employed part-time (page 14). He reported he was not currently on any medications. He made good eye contact. He evidenced a preoccupation with very dark black humor, sarcasm and cynical attitude about life and his daily functioning. His affect was constricted and his mood was preoccupied, distracted, and mildly depressed. Stream of mental activity was fluid and organized (page 16). Diagnosis included schizoaffective disorder, fetishism, poly substance abuse disorder and personality disorder (page 17).

A Mental Status Examination dated 4/2009; showed claimant used alcohol and marijuana on a daily basis (page 29). His speech and thought process were unremarkable. Perceptions were normal.

His mood dysphonic (page 35). Claimant reported that he was a self mutilator. His diagnosis included bipolar, nondependent alcohol abuse, cannabis abuse and borderline personality disorder (page 39).

ANALYSIS:

Claimant has a history of substance abuse with current use. He has a history of being a self-mutilator. He was not on any medications in 3/2009. in 3/2009 his speech and thought process were unremarkable.

* * *

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not wear braces. Claimant was hospitalized twice in 2008 to obtain treatment for suicidal thoughts. He was hospitalized once in 2009 to obtain treatment for suicidal thoughts and depression. Claimant has not had any suicidal thoughts recently.

(7) Claimant does not have a valid driver's license. He did drive an automobile once, unlawfully. Claimant is computer literate.

(8) The following medical/psychological records are persuasive:

(a) An [REDACTED] was reviewed. The [REDACTED] evaluator provided the following diagnosis summary:

Claimant is assessed today for services. He presents with multiple tattoos and face piercing's. He also has numerous cuts on his arms and the dome of his head. He states he has been a self-mutilator since the age of 12. He admits he has trust issues dating back to the earliest memories of 4-5 years old. He states he is currently drinking alcohol and smoking marijuana daily, but has reduced his consumption, due to worsening behaviors, but denies any previous

substance abuse treatment. He states he thinks daily of death and dying. He has made suicide attempts previously. He is involved with [REDACTED] music and his self-mutilating behavior and dark thoughts are a part of that culture. He describes himself as a sado-masochist. He is currently homeless and lives with friends or his mother.

* * *

- (b) The [REDACTED] provided the following DSM diagnoses: Axis I—Bipolar disorder/NOS; non-dependent alcohol abuse, unspecified, drunkenness; cannabis abuse. The Axis V/GAF score is 52.

* * *

- (c) A [REDACTED] Examination was reviewed.

The PhD. Psychologist provided the following background:

Claimant is a 22 year-old causation male who alleges disability secondary to depression, paranoia, suicidal ideation, and a long history of self-mutilating cutting behaviors, fetishes related to cutting and auditory hallucinations. Claimant reports he has been in and out of psychiatric and medical treatment through the ER because of his chronic self-mutilating behaviors, although he has never continued with outpatient therapy upon his discharge. He admits to “I love cutting myself and it gives both sexual pleasure as well as alleviates my anxiety.”

* * *

Claimant is currently employed part-time as a freight handler and has been working full-time making good income, until he asked for his work load to be reduced when he felt he was getting too stressed and not able to keep up with the work load. His job involves loading and unloading trucks, and he admits he has often lost jobs because he did not show up, was getting drunk, or simply being unmotivated at the worksite.

* * *

The PhD. Psychologist provided the following diagnosis: Axis I—Schizoaffective Disorder; fetishism; polysubstance abuse disorder, severe, recurrent. Axis V/GAF—50.

(9) The probative medical 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 is unable to work due to depression, bipolar disorder, schizophrenia, and anxiety disorder. The PhD. Psychologist provided a diagnosis of schizoaffective disorder, fetishism and polysubstance abuse disorder. The Axis V/GAF score is 50. The PhD. Psychologist did not report any functional limitations due to claimant's mental impairments. Also, claimant did not provide a DHS-49D or a 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. Also, claimant does not allege disability based on a physical impairment.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. His application is currently pending.

CONSLUSTIONS 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 (RFC) to perform unskilled sedentary work.

The department denied MA-P benefits because claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

Also, the medical evidence of record indicates that claimant retains the capacity to perform a wide range of unskilled work.

Based on claimant's vocational profile [younger individual (age 22), with a 12th grade education and a history of unskilled work] the department denied MA-P based on Med-Voc Rule 204.00h. The department also noted that claimant is not eligible for benefits under Public Law 104-121 which precludes eligibility when drug and alcohol abuse is a material factor in the impairments alleged as the basis for disability.

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).

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 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).

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 eligible for MA-P.

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 medical/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.

Unless an impairment is existed to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 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).

If claimant does not have an impairment or combination of impairments that profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 criteria.

Under the *de minimus* rule, claimant meets the severity and duration requirements.

However, in order to qualify for MA-P disability, claimant must establish impairments which prevent all normal work activities.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not meet the standard of these Listings. SHRT evaluated claimant's eligibility using the SSI Listings. Claimant does not meet any of the applicable Listings.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a freight handler unloading trucks for a [REDACTED] grocery store.

Claimant's work as a freight handler for [REDACTED]'s involved light/medium work. He operated an electronic forklift in order to load and unload the trucks.

Although claimant alleges that he is unable to perform his prior work as a freight for [REDACTED], the medical records establish that many of his mental impairments are a direct result of his drug and alcohol abuse. Although claimant was reluctant to admit drug and alcohol abuse during his sworn testimony, the record is full of evidence that he is currently abusing drug and alcohol. To the extent that claimant's mental impairments interfere with his ability to perform

normal work activities, claimant's drug and alcohol activities are a causal factor in his inability to work. Also, it should be noted, that the consulting PhD. Psychologist issued a Axis V/GAF score of 50 (moderate symptoms).

Therefore, claimant has not met his burden of proof to establish that he is unable to return to his previous work as a freight handler for [REDACTED].

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/psychological evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on depression, bipolar disorder, schizophrenia and anxiety disorder. However, the psychological evidence provided by the consulting PhD psychologist does not show that claimant is totally unable to perform any work activities. Furthermore, claimant did not submit a DHS-49D or a DHS-49E to show his mental residual functional capacity. For these reasons, claimant is not entitled to MA-P disability based on his mental impairments.

Second, claimant does not allege disability based on a physical impairment. Also, there is no medical evidence in the record to show that claimant has any physical impairments that totally prevent him from working.

Finally, it is significant, that claimant performs an extensive list of activities of daily living, has an active social life with his [REDACTED] band 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 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, using Step 5 of the sequential analysis, as presented above.

Finally, it should be noted that the Administrative Law Judge does not believe that claimant's testimony at the hearing was entirely truthful. Claimant appears to have intentionally minimized his use of illicit drugs and alcohol. The Administrative Law Judge does not give claimant's testimony a great deal of credibility for this reason.

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 20, 2010

Date Mailed: April 21, 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.

JWS/sd

cc:

