

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: 2009-27206
Issue No: 2009; 4031
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 Cynthia Nolan (ES).

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) 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 (April 8, 2009) who was denied by SHRT (July 9, 2009) based on claimant's ability to perform simple unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age—42; education—high school diploma, post-high school education—none; work experience—laborer at a factory and line worker for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when he worked as a laborer for a local factory.

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

- (a) Sleep dysfunction;
- (b) Depression;
- (c) Suicidal thoughts.

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

OBJECTIVE MEDICAL EVIDENCE (JULY 9, 2009)

MEDICAL SUMMARY:

Claimant has a history of substance abuse. The mental examination reported he was anxious with constricted affect. His thought process was logical and has poor insight. (pp. 34-36) He is not restricted in his activities of daily living. (pp 7-10).

ANALYSIS:

Claimant has no mental health history, other than being medication while most recently in jail. According to the Activity of Daily Living Report, there are no limitations. The objective medical evidence 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 grandmother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes). Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant wears an ace bandage on his left knee. Claimant did not receive inpatient hospitalization in 2008 or 2009.

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

(8) The following medical records are persuasive:

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

The psychiatrist provided the following background:

Claimant has no information regarding his birth and developmental history. He denies any childhood illnesses. Claimant was raised in [REDACTED]. His biological parents were never married. He was raised by his maternal grandparents. He reports his biological mother was not involved in his life. He reports that she did not maintain employment and abused substances. Similarly, his father was not involved in clients' life and also had a history of substance abuse. Claimant reports that his biological father was employed at [REDACTED].

Claimant was married at the age of 31, and divorced after a year of marriage. He has a 14 year-old biological daughter, who lives with his maternal grandmother. Claimant's paternal rights have been terminated.

Claimant graduated from [REDACTED] in [REDACTED]. He received special education services throughout his schooling and was retained in grade 12. He reports that he had discipline problems in school and was often involved in physical fights with other students. He reports learning struggles in all areas and difficulty paying attention and comprehending information. He denies any difficulty relating to his peers.

In regards to his criminal history, claimant was charged the first time for receiving stolen property at the age of 14. As an adult, claimant has been incarcerated on several occasions.

The psychiatrist provided the following clinical impressions:

Claimant reports that he has struggled with depressed and manic mood states since approximately 1999. Claimant reports the following current symptoms: “Always up and down, really bad and getting worse.” He shares that he has elevated mood states that last for short periods of time along with lows that also last for short periods of time. He adds that he has difficulty sleeping and an increased appetite, fleeting thoughts of suicide and homicide in the recent past. He reports a loss of pleasure in activities of interest, frequent tiredness and fatigue, difficulty concentrating and making decisions. He denies experiencing perceptual disturbances. He also denied current suicidal and homicidal ideations. Claimant has poor insight and judgment and insufficient support system. Claimant is in the contemplative stage for MISA.

The [REDACTED] provide the following diagnosis:

Axis I—Mood disorder/NOS. 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 experiences depression and suicidal thoughts. The [REDACTED] psychiatric report shows an Axis I diagnosis of Mood Disorder NOS and an Axis V/GAF of 50. The [REDACTED] does not state that claimant is totally unable to work. 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. Claimant reported sleep dysfunction as his main physical symptom.

However, the medical records do not establish any functional limitations arising out of claimant's sleep dysfunction.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application; claimant filed a timely appeal.

(12) Claimant has applied for assistance from the [REDACTED]. His current status is unclear.

CONCLUSIONS OF LAW

Claimant thinks that 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 (RFC) to perform simple unskilled medium work.

The department denied MA-P/SDA benefits based on Med-Voc Rule 203.28 as a guide.

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).

The department decides eligibility based on mental impairment 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).

(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: 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/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/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 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 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.

Claimant must establish an impairment which is expected to result in death, has existed for a continuous period of 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, 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.

However, in order to qualify for disability based on MA-P/SDA, claimant must establish impairments which show that claimant is unable to perform any work activities.

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 Listing. SHRT evaluated claimant's eligibility using the applicable SSI Listings. Claimant does not meet the requirement for the Listings.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a laborer in a factory. This was medium work.

The medical evidence of record does not show a physical impairment that would prevent claimant from performing medium work. Also, there is no medical evidence to show that claimant would be unable to respond to the work related directions of a supervisor.

Although claimant alleges that he is unable to work based on his mental impairments (depression and suicidal thoughts), the medical records provided by [REDACTED] do not report any functional or emotional limitations that would totally prevent claimant from performing manual labor at a factory. The [REDACTED] records show a GAF score of 50 (moderate symptoms).

Therefore, claimant has met his burden of proof to establish that he is unable to return to his previous work.

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 combined mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a mental impairment: depression and suicidal thoughts. The psychiatric evidence provided by [REDACTED] does not show that claimant is totally unable to perform any work activities. The Axis IV/GAF score is 50. Furthermore, claimant did submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Claimant is not entitled to MA-P/SDA disability based on his mental impairments.

Second, claimant alleges disability based on sleep dysfunction. There is no medical evidence in the record to show a diagnosis of sleep dysfunction. Also, there is no medical evidence in the record to show that claimant is physically unable to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his sleep dysfunction, depression and suicidal thoughts.

Claimant currently performs several Activities of Daily Living and has an active social life with his grandmother.

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

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.

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 17, 2010

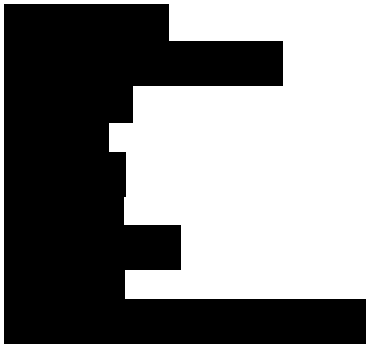
Date Mailed: March 18, 2010

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

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