

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: 2009-27532
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 6, 2009
Oceana 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 Hart on August 6, 2009.

The department was represented by Michael O'Brien (FIM) and Marcia Dougan (FIS).

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 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for 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 (December 18, 2008) who was denied by SHRT (July 2, 2009) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—25; education—high school diploma, post-high school education—none; work experience—worked as a volunteer for the [REDACTED] [REDACTED] for high school credit (janitorial work) in 2000.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2000 when he was a volunteer (janitor) at the [REDACTED].

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

- (a) Not legally able to drive;
- (b) Can't climb ladders;
- (c) Can't operate dangerous machinery;
- (d) Can't wash dishes;
- (e) Epilepsy.

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

OBJECTIVE MEDICAL EVIDENCE (JULY 2, 2009)

SHRT decided that claimant was able to perform unskilled light work. SHRT evaluated claimant's impairments using the SSI Listing. SHRT decided claimant does not meet any of the applicable Listing. SHRT denied disability based on 20 CFR 416.967(b) due to claimant's ability to perform unskilled light work.

(6) Claimant lives with his mother and father and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), light cleaning and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. He does not

wear braces on his neck, back or arms. Claimant did not receive inpatient hospitalization 2008 or 2009.

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

Claimant is not computer literate.

- (8) The following medical records are persuasive:

- (a) An April 10, 2009 Psychiatric/Psychological Medical Report was reviewed.

The PhD psychologist provided the following background:

Claimant is a 25 year one month old male. He was referred for mental status examination by Oceana County DHS. Claimant said he is applying for disability due to Epilepsy. He said he has been epileptic since 2002-2003 just after he graduated from high school. He said it has always been with him, but just started coming out. The last time he had a seizure was January 6 of 2009. He thinks that he only has them in his sleep. He wakes up and his tongue is sore from biting it. The doctor says that he could have them and not even know it. He said that the last one in January is the first one he can ever remember having while awake. He said that his magnesium was really low at the time so they put him on magnesium, which he thinks is helping.

Personal History:

* * *

There is no else in the family they are aware of with seizures. His father has vertigo. Claimant said that his childhood was fine with his mother and father. He went camping and fishing a lot growing up. He was in [REDACTED] for a while until he lost interest. His father lived inside an old school bus for a time, but he doesn't remember any of it. He said that he went through the 12th grade in school graduating from [REDACTED] [REDACTED] in 2002. He said that he went to alternative school because all of his friends went there, and he used to get into a lot of fights. He said that he was in special education because of getting in trouble all the time.

He never repeated any grades in school, and actually graduated early because he had all of his credits required. He said he has never gone to college. He said he took work study in high school. He has never been in the military.

* * *

Claimant said that he rakes leaves for a woman every year and she pays him \$7 per hour. He said that he picks up trash out of the woods. He said he squirrel hunts and deer hunts all the time. The last time he had a more regular job was when he worked construction for a guy 5 years ago. The guy asked for his Social Security number, and claimant got mad and quit. He did that for about 6 months. He said that he is strong as a mule and can do any simple job that you give him to do. He said that recently he was helping someone demolish his living room and tear out some old walls and dump it. That was just a 2-day job. He forgot to take his magnesium and had to have someone bring it to him because he was getting dizzy. The longest period of time that he ever worked in one place was about 6 months. Claimant said that he is looking for odd jobs around the neighborhood right now. He said that he can't drive right now. He used to go scrapping, but scrap is down so he doesn't do that much right now. The last time he applied for a job was about a year ago, but they deleted it because of his Epilepsy. They told him he would have to go through a bunch of doctor's to get hired there. He said that was the last place that he applied.

SOCIAL FUNCTIONING:

Claimant said that he has a few friends, but not a lot. He said he might have 10 immediate friends. He said he mainly hangs around with couples he went to school with. He mainly has 3 good friends. He said that he has been stiffed a few times at parties and his so called friends never tried to help him. He said he does not get along very well with other people. He said he has a short cord and fuse. When people push him the wrong way, he pushes back. He said that he does not get into a lot of fights, but he has been in a lot of fights. He said it is usually something going wrong at a party.

Past and Present Interests:

Claimant said that he is into outdoors. He is into mushrooms, and is getting ready to hunt mushrooms. He is really into hunting, and hunts mainly deer and squirrels. He fishes every year and does some of that. The last time that he went hunting or fishing was in March of 2009. He said that he went squirrel hunting. He said that he goes hunting every day during deer season. He says that he gets dropped off at the deer camp every day. He goes squirrel hunting once a week or so. He said that he rabbit hunts at least once per week. He said that he usually helps other people. He said that he has a phone so he can always call someone if he needs to. He mainly takes his buddy with him hunting. Claimant said that he likes to play ██████████, can not much of anything else. He likes to shoot his bows and guns and clean them up and fix them. He said that he likes to go for walks with the dogs a lot, and get out into nature. He said that he likes picking up trash from the rivers and such.

ACTIVITIES:

Claimant said he usually gets up about 8:30. He takes his pills. Sometimes he has one cup of coffee. He has to eat something after he takes his medication. Usually he is outside doing something. He snowplows the driveway in the winter, and shovels snow. He said that he pulls the snow off the roof. He would get all of his work done in the morning and then go outside and watch movies. He said he likes being outside and being in the outdoors. Sometimes he will go do the laundry with his parents because they don't have a washer or dryer. Sometimes his girlfriend picks him up and he will stay the night at her house. Sometimes he spends the night at his brothers. He usually does things like burning trash. He might watch some television. He said today he helped a buddy load a 4-wheeler on a trailer. He said that he tries to keep busy with something, but there usually aren't enough things to do. He loves listening to music, and can play the piano a little bit. He said he usually goes to bed on a typical night if he is home around 9 or 10. If he isn't home, he goes to bed a little later. He said that he sleeps a lot and needs a lot of sleep. He said that he will vacuum, pick-up stuff that is too heavy for his parents. He will cook sometimes and they all

take turns cooking. He is a better breakfast cook. He does his own self-care.

* * *

The PhD psychologist provided the following diagnoses:

Axis I—Alcohol abuse; Adjustment Disorder with mixed anxiety and depression. Axis V/GAF—59.

- (b) A January 16, 2009 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnosis: Seizure Disorder; Acute Anxiety Disorder.

The physician provided the following work limitations: The physician stated that claimant is not able to work around heavy machinery. He is able to lift up to 25 pounds frequently, able to stand and/or walk about 6 hours in an 8 hour day, able to sit. Claimant is able to sit about 6 hours in an 8 day. Claimant is able to use his hands/arms normally, able to use his feet/legs normally. The physician states that claimant has no mental limitations.

- (c) A [REDACTED] Narrative Report was reviewed.

The neurologist provided the following chief complaint: I had a seizure on December 6, 2008.

History of Present Illness:

Claimant has a long history of seizures. He also has spells that sound like anxiety attacks and hyperventilation. The evening before December 6, 2008, he had vomited his Keppra. He has been on Tegratol and Depakote in the past under the care of [REDACTED]. He has been taking Keppra for 6 years. His current dose is 1,000 mgs, twice daily. All of his EEG's have been normal. He has had scans in the past which are normal.

The neurologist provided the following information:

One would presume that the reason he had a seizure on December 6 was vomiting his dose of medicine the night before. If he were to do this regularly, then perhaps we should increase his dose of Keppra in the evening, but for time begin, leaving him on Keppra 1,000 mg twice a day as appropriate. I told him he cannot drive a car for a 6 months after his last seizure, and he should not climb to dangerous heights or swim, or operate dangerous machinery.

* * *

It still sounds to me like he has anxiety attacks.

The neurologist provided the following clinical impression:

(1) Diagnosis—Seizure Disorder, Anxiety Attacks, Hyperventilation Syndrome.

* * *

(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 seizures. However, the PhD psychologist did not state that claimant was totally unable to work. The PhD psychologist provided the following diagnosis: Axis I—Alcohol abuse; Adjustment Disorder with mixed anxiety and depression. Axis V—59.

(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. The physician who completed the DHS-49 (January 16, 2009) stated that claimant was able to lift up to 25 frequently, stand and/or walk about 6 hours in an 8 hour day, sit about 6 hours in an 8 day. Claimant has normal use of his hands/arms and normal use of his feet/legs. A recent neurological report dated January 14, 2009 showed that claimant's diagnosis was Seizure disorder with anxiety attacks and hyperventilation syndrome. The neurologist proposed the following work limitations, unable to drive a car for 6 months after last

seizure, unable to climb to dangerous heights, unable to swim, unable to operate dangerous machinery. The neurologist did not state that claimant was 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 he is entitled to 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 normal work activities.

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 2.01.

The department thinks that claimant's vocational profile (younger individual [age 25] with a high school education, and no work history, must be denied using Med-Voc Rule 202.20 as a guide.

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

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

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).

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 at least 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 a *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 did not allege disability based on a Listing. SHRT reviewed claimant's impairments based on the SSI Listings. Claimant does not meet any of the Social Security 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 work history is exceedingly sparse. It appears that he has had several odd jobs including lawn care, scavenging for recyclable materials, and working as an unpaid volunteer for the [REDACTED].

Claimant's work at the [REDACTED] was sedentary (janitorial) work.

The medical evidence of record does not preclude claimant from returning to sedentary/janitorial type work.

Since claimant is able to return to his previous (janitorial) work, 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 SDA purposes.

First, claimant does not allege a disability based on a mental impairment.

Second, claimant alleges disability based on his seizure disorder/Epilepsy and his inability to drive, climb ladders, operate machinery and wash dishes. The medical evidence of record does not support claimant's opinion that he is totally unable to work. The physician who provided the DHS-49 (January 16, 2009) states that claimant is able to lift 25 pounds frequently, able to stand/walk about 6 hours in an 8 hour day, and able to sit about 8 hours in an 8 day.

Claimant is also able to use both his hands and arms normally, as well as his feet/legs.

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 several Activities of Daily Living and has an active social life with his relatives. The record also establish that claimant is an avid hunter and fisherman, that he picks up trash, hunts squirrel all the time, and worked construction 5 years ago. Claimant likes to play [REDACTED]; he likes to shoot his bows and guns and clean them up and fix them. He likes to go for walks with the dogs a lot and to get out into nature.

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 at [REDACTED]. He is also able to do janitorial work.

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.

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

Date Signed: March 29, 2010

Date Mailed: March 30, 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:

