

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: 2009-31185
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 15, 2009
Washtenaw 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 September 15, 2009, in Ypsilanti. Claimant personally appeared and testified under oath.

The department was represented by Tom Garback (ES).

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 (February 23, 2009) who was denied by SHRT (August 11, 2009) based on claimant's ability to perform unskilled sedentary work.

(2) Claimant's vocational factors are: age--30; education--11th grade; post high school education--GED, one semester at [REDACTED] (computer major) claimant is currently studying motorcycle repair at [REDACTED]; work experience-- cook for [REDACTED], cook for [REDACTED] and cook for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since June 2005 when he was employed as a cook for [REDACTED].

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

- (a) Throws up blood;
- (b) Digestive dysfunction;
- (c) Depression;
- (d) Bipolar disorder.

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

OBJECTIVE MEDICAL EVIDENCE (August 11, 2009)

The department thinks that claimant is able to perform unskilled sedentary work. The department reviewed claimant's impairments using SSI Listing 12.01. Claimant does not meet the requirements of the applicable listing.

* * *

(6) Claimant lives with relatives and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry, grocery shopping and banking. Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant does not wear braces. Claimant was not hospitalized in 2008 or 2009.

(7) Claimant does not have a valid driver's license. Claimant is computer literate and has taken courses at [REDACTED] in computer repair. Claimant is currently taking courses at [REDACTED] in motorcycle repair.

(8) The following medical records are persuasive:

- (a) A February 3, 2009 Medical Examination Report (DHS-49) was reviewed.

The physician reported the following diagnoses: hypertension, dyslipidemia, ADHD, Bipolar disorder, and history of Reyes Syndrome.

The physician reports that claimant has no physical limitations and no mental limitations.

- (b) A June 23, 2008 psychological evaluation was reviewed.

The Ph.D. psychologist provided the following background:

Claimant is a 29-year-old man referred by Ingham County Department of Human Services (DHS) for a psychological evaluation. It should be noted that I previously evaluated claimant on March 22, 2007, also at the request of DHS. At the time of that evaluation, claimant obtained a Verbal IQ of 96, a Performance IQ of 84, and a full-scale IQ of 90. His academic skills fell within the Low Average to Average range.

* * *

The previous psychological evaluation (March 22, 2007) noted claimant's extended history of psychiatric care. In the past, claimant was hospitalized four times, diagnosed with Bipolar Disorder and Borderline Personality Disorder. He also had a history of polysubstance abuse and alcohol abuse. Claimant has now been drug- and alcohol-free since 2006.

* * *

Claimant reported that he continues to live with his wife. They have no children. He stated that neither of them works, and they are living on student loans. Claimant also reported that he currently is receiving assistance through DHS in the form of \$264.00 a month, food stamps, and

Medicaid. He reported that he is seeking help through [REDACTED] for financial assistance with his program at [REDACTED]. They both are attending [REDACTED]. Claimant reported that he is studying [REDACTED]. He stated that he completed his GED in July, 2007. He hopes to complete an Associate's Degree at [REDACTED] in one more year.

* * *

EMOTIONAL REACTION: Claimant's responses to the Beck Depression Inventory, Existential Anxiety Scale, Social Avoidance and Distress Scale, and Incomplete Sentences Blank showed continuing evidence of significant levels of depression, social isolation, and social alienation. However, claimant's general presentation seemed better and more stable than a year ago.

* * *

The Ph.D. psychologist also provided the following DSM diagnoses:

Axis I--Bipolar Disorder, most recent episode, depressed; Alcohol abuse in remission; polysubstance abuse in remission; rule out cognitive disorder.

Axis V--Current GAF: 52 (moderate symptoms).

* * *

The Ph.D. psychologist did not report that claimant is totally unable to work.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to preclude claimant from performing all customary work functions for the required period of time. Claimant testified that he has been diagnosed with depression and Bipolar Disorder. The consulting Ph.D. psychologist provided the following diagnoses: Bipolar Disorder most recent episode, depressed; alcohol abuse in remission; Polysubstance abuse in remission; rule out cognitive disorder. The consulting psychologist provided an Axis V GAF--52. The Ph.D. psychologist did not report any significant functional limitations due to claimant's mental impairments. The mental residual functional capacity assessment (DHS-49E

on March 9, 2009) reported that there was no evidence of a mental limitation in any of the 20 skill sets evaluated.

(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 the following physical impairments: vomits blood and digestive dysfunction. The consulting physician who submitted a report did not state that claimant was totally unable to work.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal. When claimant lived in [REDACTED], he received assistance from the [REDACTED] department which funded claimant's coursework in computers at [REDACTED]. Apparently, claimant no longer receives assistance from MRS.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled sedentary work.

The department evaluated claimant's impairments using SSI Listing 12.01. Claimant does not meet any of the applicable SSI listings.

The department denied MA-P/SDA benefits based on 20 CFR 416.968(a).

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 does 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, a history 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).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for the purpose of the MA-P/SDA programs. 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/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by 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 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 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. Unless an impairment is expected to result in death, it must have existed, or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

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

Since the severity and duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

SHRT evaluated claimant's impairments using SSI Listing 12.01.

Claimant does not meet the requirements for the applicable SSI Listings.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a cook at a restaurant. Claimant's work as a cook was light semi-skilled work. In order to work as chef, claimant must be able to stand for a continuous period of at least eight hours.

Although claimant alleges that he is unable to work based on his mental impairments (depression and Bipolar Disorder), the Ph.D. psychologist who evaluated claimant does not report that claimant was totally unable to return to his previous work. Also, the Ph.D. psychologist provided an Axis V/GAF of 52 (moderate impairments).

Currently, claimant is taking courses in motorcycle repair at [REDACTED].

Second, claimant alleges disability based on his digestive dysfunction and his bloody vomit. There is no probative medical evidence in the record to show that claimant's physical impairments severely limit claimant's ability to work. The physician who examined claimant reported that he had no work limitations.

In summary, claimant performs an extensive list of activities of daily living, has an active social life with his landlord and is highly computer literate. Claimant is currently a student at [REDACTED]. 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 for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

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 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: 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.

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cc:

