

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: 2009-33455
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 29, 2009
Genesee 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 29, 2009, in Flint. The claimant personally appeared and testified under oath. Claimant was accompanied by [REDACTED].

The department was represented by Roxanne Foster (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 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/retro/SDA applicant (April 28, 2009) who was denied by SHRT (August 28, 2009). SHRT relied on claimant's failure to establish impairment which meets the department's severity and duration requirements. Claimant requests retro MA for January and February and March 2009. The record closed on October 29, 2009, and the disputed eligibility is April 28, 2009 to October 29, 2009.

(2) Claimant's vocational factors are: age--38; education--11th grade; post high school education--none; work experience--dishwasher at a restaurant and pop can collector and recycler.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 1989 when he worked as a dishwasher for a local restaurant.

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

- (a) Schizoaffective disorder;
- (b) Stomach dysfunction;

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

OBJECTIVE MEDICAL EVIDENCE (8/28/2009)

A DHS-49 form in the file indicated claimant's examination was completely within normal limits, including his mental status (page 20).

A psychological evaluation dated 2/08 revealed no major psychopathologies. He presented as someone who may have a learning disability. Diagnosis was rule out learning disorder/NOS (pages 4-10).

ANALYSIS:

There is no evidence in file to suggest a significant mental disorder. A psychological evaluation in 2008 revealed no major psychopathologies. A current 49 form indicated the claimant had no mental limitations and his examination was completely normal.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, cooking (eats potato chips), grocery shopping (buys potato chips). Claimant uses a cane once a month. He does not use a walker, wheelchair, or shower stool. Claimant was not hospitalized in 2008. In 2009, he was hospitalized at [REDACTED] for schizoaffective disorder.

(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) A May 7, 2009 psychiatric/psychological examination report (DHS-49D) was reviewed. The psychiatrist reported that claimant had paranoid delusions. He noted that claimant stays at home except for doctor appointments.

The psychiatrist provided the following DSM-IV diagnosis:

Axis I--schizophrenia with paranoid features.

Axis V--GAF/45.

- (b) A May 2, 2009 medical examination report (DHS-49) reports the current following diagnoses:

- (1) Hypertension;
- (2) GERD;
- (3) Chronic sinusitis.

The physician reports that claimant is able to lift 20 pounds frequently and 25 pounds occasionally. He is able to stand/walk at least two hours in an eight-hour day. He was able to sit six hours in an eight-hour day. He has normal use of his hands, arms and normal use of his feet/legs.

(9) Claimant alleges disability based on a mental impairment: Schizophrenia.

Claimant provided a psychiatric evaluation, dated May 7, 2009. The psychiatrist reported that

claimant has a history of paranoid delusions and auditory and visual hallucinations. The mental status examination showed paranoid delusions. Claimant's daily functioning consisted of staying at home except for doctor appointments. The DSM-IV diagnosis was: Axis I--schizophrenia with paranoid features. Axis V--GAF of 45.

(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 testified that he has stomach dysfunction. The consulting physician reports: hypertension, GERD and chronic sinusitis. Claimant was unable to clearly explain his physical impairments. He was unable to express his reasons for requesting disability during the hearing. On many occasions during the hearing, claimant was unable to answer the questions posed by the Administrative Law Judge, apparently due to a combination of low vocabulary and an inability to express himself clearly and responsibly during the hearing. Claimant does not have the necessary intellectual skills to complete a job application. It appears that he is unable to function in a normal work environment without the assistance of a friend and/or interpreter to convey the requirements of the job.

(11) Claimant recently applied for (SSI) with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal.

(12) Claimant appeared at the hearing with soiled clothing and his appearance was unkempt. Claimant's grooming was marginal. Claimant's physical presentation was somewhat unkempt, appearing to be someone who was homeless and moved from home to home. Claimant's clothing needed washing.

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 (RFC) to perform normal unskilled work activities.

The department concluded that the medical evidence did not document a mental/physical impairment that significantly limited claimant's ability to perform basic work activities.

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).

(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 purposes 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 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 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 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 12 months and/or totally prevents all current work activities. 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).

Applying the *de minimus* test, 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 the Listings.

However, SHRT evaluated claimant's eligibility using SSI Listings. SHRT decided that claimant does not meet the applicable SSI 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 last worked as a dishwasher for a restaurant. This was heavy work. The medical evidence of record establishes that claimant has a psychiatric diagnosis of schizophrenia with paranoid features.

During the hearing, the Administrative Law Judge observed that claimant performs very few activities of daily living. He does not perform cleaning, cooking, taking public transportation, paying bills, maintaining a residence and only marginally completes his own grooming and hygiene activities. He does interact with people when necessary to obtain housing. Information in the record also indicates that claimant's social functioning is marginal at best. He has little intellectual interaction with family or friends. He does not demonstrate a normal interest in initiating social contacts, communicating with friends or family or participating in group activities. Also, claimant's ability to concentrate and participate at the hearing with a normal pace was marginal. Frequently, he was unable to answer the questions posed by the Administrative Law Judge and needed the assistance of his companion to answer questions about his ability to work.

The Administrative Law Judge observed significant limitations in claimant's ability to concentrate and participate in the hearing at a normal question and answer pace. The diagnosis provided by the consulting psychiatrist was schizophrenia (with paranoid features) is consistent with claimant's difficulty in participating during the hearing.

In short, the Administrative Law Judge is persuaded that claimant is totally unable to work based on his mental impairments. The evidence of record shows that claimant performs only one or two of the normal activities of daily living, has a very limited social life with friends and neighbors, is unable to drive an automobile or operate a computer. The record also indicates that claimant's ability to read and write are significantly impaired.

Considering the entire medical record in combination with claimant's testimony, the Administrative Law Judge concludes that the claimant is unable to perform simple unskilled sedentary work (SGA). Based on this analysis, the department incorrectly denied claimant's MA-P/SDA 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 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, REVERSED.

SO ORDERED.

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

Date Signed: May 4, 2010

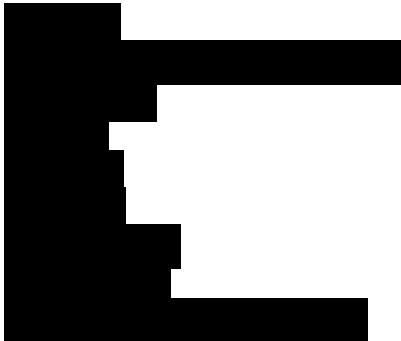
Date Mailed: May 4, 2010

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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