

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: 2009-3575
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 24, 2009
Grand Traverse 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 Traverse City on February 24, 2009. Claimant personally appeared and testified under oath.

The department was represented by Colleen Ryan (FIM). 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 (August 14, 2008) who was denied by SHRT (November 12, 2008) based on claimant's ability to perform unskilled heavy work. SHRT relied on Med-Voc Rule 204.00(h) as a guide.

(2) Claimant's vocational factors are: age--43; education--6th grade, post-high school education--GED, claimant studied refrigeration and air conditioning while in prison; work experience--welder.

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

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

- (a) Depression;
- (b) Anxiety;
- (c) Back problem;
- (d) Mood instability;
- (e) Anger issues;
- (f) Poor memory;
- (g) Has difficulty following instructions;
- (h) Third grade reading ability; and
- (i) Degenerative disc disease.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

SHRT decided that claimant is able to perform unskilled heavy work. SHRT evaluated claimant's eligibility using SSI Listing 12.04. SHRT decided that claimant does not meet the applicable Listing.

Using claimant's vocational profile [younger individual, age 43, with a GED education and a history of unskilled work], the

department denied disability benefits based on Med-Voc Rule 204.00(h).

(6) Claimant lives with his mother and father and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping (sometimes), laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair, or a shower stool. Claimant does not wear braces. Claimant did not receive any in-patient hospital services in [REDACTED].

(7) Claimant has a valid driver's license and drives an automobile approximately six times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] progress note was reviewed. The psychiatrist provided the following history:

I met with claimant today for medication review of claimant along with his case manager, [REDACTED]. Claimant indicates that he has stopped Seroquel as of three weeks ago. It started to make him feel as though he was experiencing very tight and sore muscles an hour or so after taking it each night. Since stopping the medication, these symptoms have subsided. However, also since stopping the medication, he has found himself to be more irritable and is having significant difficulty sleeping. On Seroquel, he would sleep around six hours per night. Now, without Seroquel, he wakes up every hour or so and feels like all he does is take catnaps. He things that if he were sleeping better, he would probably not be quite as irritable. He feels like his mood is up and down a lot, either irritable and/or depressed.

ASSESSMENT:

Mood lability, increased anxiety, insomnia, most likely related to discontinuation of Seroquel.

* * *

(b) A [REDACTED] psychiatric note was reviewed. The psychiatrist provided the following background:

I met with claimant today for a medication review appointment. He was accompanied by his case manager, [REDACTED]. I have not seen claimant since [REDACTED]. He apologizes for not following up sooner. He indicates he has been compliant with medications and finds them very beneficial. In fact, he is feeling the best he has felt in some time. When he was in prison, it seems as though they were changing his medication at least once a month, and he never had an opportunity to see if anything was working well. He reports that he is noticeably less irritable and agitated with Depakote. He thinks his concentration could improve further, but he does not want to make any medication changes at this time. His family is also very pleased with his response thus far.

ASSESSMENT:

Improvement in mood.

- (c) A [REDACTED] psychiatric evaluation was reviewed. The psychiatrist presented the following history:

Claimant is a 41-year-old gentleman who presents for Psychiatric Evaluation. He was partly self-referred and also referred in part by [REDACTED] from the [REDACTED], who recommended he be seen for management of his psychiatric illness.

Claimant explains he has problems with depression and anger. He has had these problems since at least high school. He explains that his father has similar problems controlling his temper.

Of note, patient also has a very significant legal history. For at least 20 years, he has been in and out of prison and jail at least 50% of the time. He has been out of prison since January 2006. The incarceration lasted 4 years. Prior to that, he had been in for 2 years for a burglary charge. He was re-imprisoned with a felony charge for a felon in possession of a weapon. He explains that he had done some work for someone and they gave him a gun as payment. He knew was not supposed to have a gun so his probation officer suggested that he sell the gun. When he went to a gun store to see it, he was arrested, and then subsequently incarcerated.

* * *

Sometimes when claimant is becoming increasingly angry and upset, he has hit his head against the wall. He has done

this since last childhood. He admits that he has hit his head so hard against the wall that he actually knocked himself out. This has happened 'a couple of times.' He doesn't know how long he has been unconscious and it is unclear whether or not he has had any consequences from these head injuries.

* * *

MENTAL STATUS EXAM:

Claimant is alert and oriented to person, place and time. He has adequate hygiene and grooming. Mood is described as depressed. Affect is congruent. Patient also appears quite anxious. Thought content and thought processes are negative for psychotic symptoms. Patient currently denies suicidal ideation. Insight and judgment are fair.

ASSESSMENT:

AXIS I -- Dysthymia, with super-imposed recurrent major depression; reported history of ADHD; generalized anxiety disorder; rule out panic disorder; social phobia; cannabis abuse.

* * *

AXIS V/GAF -- 50.

(9) The probative psychological 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. The medical records show that claimant was psychiatrically evaluated on [REDACTED]. At that time, he was given the following diagnoses: dysthymia, with super-imposed recurrent major depression; history of ADHD; generalized anxiety disorder; rule out panic disorder; social phobia; cannabis abuse. AXIS V/GAF -- 50. Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity. Taking the medical record as a whole, claimant has not established that he is totally unable to work based on his mental impairments.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. Although claimant alleges

degenerative disc disease and some back pain, this has not been established through suitable clinical studies and examinations. At this time, the medical record is insufficient to establish a severe medical impairment/physical impairment that totally precludes all work activities.

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

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 is able to perform unskilled heavy work. The department evaluated claimant's impairments using SSI Listing 12.04. The department decided that claimant does not meet the applicable Listing.

Based on claimant's vocational profile [younger individual (age 43), with a GED education and a history of unskilled work as a welder], the department denied disability benefits based on claimant's ability to perform substantial gainful activity.

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).

To determine to what degree claimant's alleged mental impairments limit his ability to do basic work activities, the following regulations must be considered:

(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).

Claimant has the burden of proof to show by preponderance of the medical evidence in the record that his mental/physical 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, or has existed for 12 months totally preventing all current work activities. 20 CFR 416.909.

Also, to qualify for SDA, claimant must satisfy both the gainful work and the durational 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 does not allege disability based on the Listings.

However, SHRT evaluated claimant's eligibility based on SSI Listing 12.04. Claimant does not meet the applicable Listing.

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 welder. This was medium work. The mental evidence of record establishes that claimant has difficulty following directions and accepting supervisory oversight. In addition, he does have a diagnosis of dysthymia with super-imposed recurrent depression; history of ADHD; generalized anxiety disorder, rule out panic disorder; social phobia and cannabis abuse. None of these diagnoses, individually, or collectively, totally prevent claimant from performing all work activity. The medical record, in particular the psychiatric note dated [REDACTED], reports that claimant is noticeably less irritable and agitated as long as he faithfully takes his Depakote. Claimant reported to his psychiatrist that he "thinks his concentration could improve further, but he does not want to make any medication changes at this time." Based on the success treatment, with psychotropic medications, of claimant's numerous psychiatric diagnoses, the Administrative Law Judge concludes that claimant is no longer precluded from performing work activities based on his mental impairments.

Therefore, claimant 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/psychiatric evidence in the record that his combined impairments meet the department's definition of disability for SDA purposes.

First, claimant alleges disability based on mood instability, anger issues and poor memory. While the psychiatric reports in the record do indicate that claimant has some difficulty concentrating and sleeping, as well as the tendency to be quite irritable, he is experiencing considerable relief through psychotropic medications. Taking the medical record as a whole, claimant has not established a severe mental impairment that precludes all work activities.

Second, claimant alleges disability based on degenerative disc disease and back pain. The medical evidence of record does not establish, clinically, that claimant suffers from a severe physical impairment (degenerative disc disease).

Finally, claimant testified that a major impediment to his return to work was back pain secondary to his degenerative disc disease. Unfortunately, evidence of pain, alone, is insufficient to establish disability for SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about his pain is profound and credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his degenerative disc disease, in combination with his mood instability, anger issues and poor memory. Claimant currently performs many activities of daily living, has an active social life with his mother and father as well as his adult children and drives an automobile approximately six times a month.

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). This is especially true as long as he maintains his psychotropic medications in compliance with his psychiatrist's directions. In this capacity, claimant is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

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.

Accordingly, the department's denial of claimant's SDA application is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: January 21, 2009

Date Mailed: January 21, 2009

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/cv

cc:

