

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: 2009-3594
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 18, 2009
Bay 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 on February 18, 2009, in Essexville, Michigan. Claimant personally appeared and testified under oath.

The department was represented by Nancy Mayhew (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 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/retro/SDA applicant (June 10, 2008) who was denied by SHRT (November 10, 2008) due to claimant's ability to perform unskilled work. Claimant requests retro MA for March, April, May 2008.

(2) Claimant's vocational factors are: age—48; education—high school diploma; post high school education—served six weeks in the [REDACTED] with a medical discharge; work experience—machine operator and temporary services laborer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since [REDACTED] when he was a machine operator.

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

- (a) Mood swings;
- (b) "Flies off the handle";
- (c) Does not work well with others;
- (d) Bipolar disorder;
- (e) Depression;
- (f) "High strung."

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

SHRT denied claimant's application because claimant is capable of performing other (unskilled work) per 20 CFR 416.968(a).

SHRT also cited the Drug & Alcohol Regulations at 20 CFR 416.935 as a basis for its denial.

SHRT evaluated claimant's eligibility using SSI Listings 12.02, 12.04, 12.06, 12.08, and 12.09.

* * *

Claimant has a live-in partner, and performs the following Activities of Daily Living (ADLs):

Dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair, or a shower stool. He does not wear braces on his arms or legs. Claimant did not receive inpatient hospitalization in 2008 or 2009.

- (6) Claimant does not have a valid drivers' license and does not drive an automobile.

Claimant is computer literate.

- (7) The following medical/psychiatric records are persuasive:

- (a) A [REDACTED] narrative psychiatric evaluation was reviewed: The psychiatrist provided the following history: Claimant is being referred for evaluation and recommendation with regards to current symptoms. Claimant admits to having both depressive and hypomanic/manic symptoms within a week. He has decreased appetite and weight loss. Claimant also has been dealing with bleeding, suicidal ideation, but denies any intent nor plan to harm himself. Claimant has episodes of hyperactivity, increased energy level, decreased need to sleep and irritability. Claimant also admits to intermittent auditory hallucinations as he described a female voice, but could not make up what it was saying, because it is more of a mumble. Claimant also occasionally sees things out of the corner of his eye and from time to time, able to recheck if he did see something or anything. Claimant has poor focus, concentration and memory.

* * *

The psychiatrist provided the following mental status examination: Claimant is a 47-year-old Caucasian male, dressed appropriately with good hygiene and grooming. He had several tattoos over his forearm and letters tattooed in his left finger which spelled 'O-Z-Y.' Claimant also has pierced ears and has earrings on his left ear. He was pleasant and cooperative with good eye contact. Thought process is goal directed. Speech was normal in volume, rate and rhythm. Claimant's mood is labile with congruent affect. He admits to feeling suicidal ideation, but denies any intent or plan to harm himself. He has no homicidal ideation. He admits to intermittent auditory and visual

hallucinations. No delusions elicited. Claimant has fair to poor focus, concentration and memory. Patient has fair insight and judgment.

* * *

The psychiatrist provided the following DSM diagnosis:

Axis I—Bipolar I disorder, most recent episode mixed;
Alcohol dependence; marijuana abuse.

* * *

Axis V/GAF—50.

The psychiatrist did not state that claimant is totally unable to work at this time.

(8) The probative psychiatric evidence does not establish an acute (non-exertional) mental condition which prevents claimant from performing all customary work functions for the required period of time. Claimant testified that he has difficulty working with others and that he is high strung. His psychiatrist stated that he has Bipolar I disorder with alcohol dependence and marijuana abuse. The psychiatrist did not report that claimant is totally unable to work. Also, claimant testified at the hearing that he was not completely disabled.

(9) 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. There is no evidence in the record that claimant has been recently evaluated by a licensed physician. Claimant did not supply a DHS-49 to establish his physical residual functional capacity. Claimant does not allege that he is physically unable to work.

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

(11) Claimant testified that he is not totally disabled. Also, claimant has been accepted by the [REDACTED] department for retraining and placement.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant admits that he is not totally disabled, but thinks he should qualify for MA-P/SDA because he has difficulty holding a job.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform a wide range of unskilled work. The department reviewed claimant's eligibility using SSI Listings 12.02, 12.04, 12.06, 12.08, and 12.09. Claimant does not meet any of the Social Security Listings.

The department thinks that the claimant retains the residual functional capacity to perform a wide range of unskilled work.

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).

To determine to what degree claimant's mental impairments limit his ability to work, 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 prove 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 was performing Substantial Gainful Activity (SGA). If claimant is working and is earning substantial income, he is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimant's 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 currently prevents all basic work activities.

Also, to qualify for MA-P/SDA, claimant must have performed gainful work under duration and criteria. 20 CFR 416.920. 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. SHRT considered the following SSI listings: 12.02, 12.04, 12.06, 12.08, 12.09. Claimant does not meet any of the 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 previously worked as a machine operator. This was medium work.

There is no evidence of a physical impairment that would totally prevent claimant from performing work as a machinist. However, claimant argues that he is mentally impaired due to his bipolar disorder and other mental impairments. However, the narrative psychiatric examination does not provide any evidence that claimant is totally unable to work.

Since claimant was fired by his previous employer, apparently due to his inability to get along with his supervisor, he is unable to return his previous work due to his mental idiosyncrasies and impairments.

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 MA-P/SDA purposes.

First, claimant alleges disability based on bipolar disorder and his habit of flying off the handle when he is relating to others. The recent psychiatric evaluation ([REDACTED]) provided the following diagnoses: Bipolar disorder, Type I, alcohol dependence and marijuana abuse. Claimant's Axis V/GAF score is 50. The report by the psychiatrist does not establish that claimant's mental impairments are so severe that he is totally unable to work. In addition, claimant did not submit a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, claimant does not allege disability based on a physical impairment. Furthermore, there is no medical evidence of a physical impairment in the record.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his bipolar disorder and other mental impairments. Claimant currently performs an exhaustive list of Activities of Daily Living (ADLs), has an active social life with his live-in partner and is computer literate. 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/light/medium work (SGA). In this capacity, claimant is able to work as a ticket taker for a theater, as a parking attendant, as a greeter at [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 claimant's MA-P/SDA application is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: March 25, 2009

Date Mailed: March 26, 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 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:

