

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-30648

Issue No: 2009; 4031

Case No: [REDACTED]

Hearing Date:

May 11, 2010

Muskegon 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 May 11, 2010, in Muskegon. The claimant personally appeared and testified under oath.

The department was represented by Matt Bixler (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team on May 14, 2010. Claimant waived the disability requirements so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

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 (October 29, 2009) who was denied by SHRT (April 21 and May 19, 2010). SHRT relied on Med-Voc Rule 203.21 as a guide.
- (2) Claimant's vocational factors are: age--51; education—high school diploma; post high school education--none; work experience—factory work with various temp agencies and shelf stocker for a party store.
- (3) Claimant was released from prison in 2008 and has not worked since.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Back pain;
 - (b) Left knee pain;
 - (c) COPD;
 - (d) Asthma;
 - (e) Hepatitis C;
 - (f) Liver dysfunction;
 - (g) Leg swelling;
 - (h) Asthma.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (April 21, 2010)

(5A) **MEDICAL SUMMARY:**

The medical status, dated 3/2009 showed claimant was nonspontaneous. His speech was clear, coherent and fluent. His thought processes were relevant, logical, connected and concrete. He complained of having paranoid and personality thoughts towards people in general. His affect was depressed (Page 38). IQ testing in 1993 indicated claimant had a full-scale IQ of 77. Diagnoses include major depressive disorder, attention deficit hyperactive disorder, history of alcohol and drug abuse and borderline personality features with borderline intellectual ability (Pages 36-37).

A physical examination, dated 3/2009, showed claimant had moderate reduction in his breath sounds, and he had a few expiratory wheezes in the upper left fields. He had heavy tobacco stains on his fingers. Fine and gross dexterity were intact. Sensory functions were full. Straight leg raise was negative. Strength was intact in both lower extremities. There was insignificant tenderness in the knees bilaterally. Gait was normal. His thoughts were well-organized and he did not appear anxious (Page 29).

In 4/2009, he had a pulmonary function study which showed he was 72 inches and his best FEV1 was 3.17 and best FVC was 3.90. No post bronchial dilator studies were done (from pages 24).

In 10/2009, claimant's breath sounds were normal. His mental status was normal. Reflexes were normal. Gait was normal, but slow and cautious. He did not appear to be in pain, but displayed poor effort towards the examination (Page 8).

In 11/2009, claimant was oriented x3. His breath sounds were clear (Page 10). His affect was appropriate for mood which was depressed and flattened. His speech was normal. Thought content/perception was normal (page 9).

ANALYSIS:

Claimant has a history of substance abuse. He had an IQ of 77. His thoughts were relevant, logical, connected and concrete. His examination in 3/2009 showed decreased breath sounds and few wheezes. However, his pulmonary function study was basically within normal limits. In 10/2009 and 11/2009, his mental status was normal and his thought content/perception was normal. His physical examinations were unremarkable at that time.

* * *

(5B) A [REDACTED] consulting psychological evaluation was reviewed. The [REDACTED] psychologist provided the following pertinent information:

HISTORY OF ILLNESS:

Complaints and symptoms: Claimant is a 51-year-old male who states he has been hearing voices for many years. The voices tell him to hurt himself. He has burned himself on both arms. He has a history of being in prison for assault and home invasion. He complains of being depressed all of his life, and he does isolate himself from others. He has no interest or motivation, but does enjoy smoking cigarettes. His sleep has improved somewhat with the use of medication, but his appetite is less than normal. He feels hopeless and worthless. He has thoughts of suicide all the time, but he has no intentions or plans of hurting himself or anyone else. He has a history of multiple suicide attempts, the last being two years ago with an overdose. He has been diagnosed with COPD and has been for several years. He has shortness of breath and he tires easily even without exertion. He coughs and wheezes at times. He has been diagnosed with Hepatitis C, high blood pressure, and osteoarthritis. He has pain and swelling in the joints of his hands, legs, and ankles. He has pain daily and constantly, rating his pain currently at 7 on a scale of 0 to 10. When the pain is at its worse, he rates it as 11 or 12. When the pain is at its least, he rates it 6 or 7. He cannot stand or walk for very long.

* * *

MENTAL STATUS:

Attitude and behavior: Claimant was in contact with reality. He was cooperative, but rather subdued and depressed looking. He complained of being nervous, but there were no motor coordinator problems observed. He described his self esteem as "bad," saying "you can't understand." He became a little more agitated and irritable as the interview progressed.

MENTAL STREAM OF ACTIVITY:

Claimant was oriented, alert, and nonspontaneous. His speech was clear, coherent, and fluent. His thought processes were relevant, logical, connected and concrete.

MENTAL TREND:

Claimant denies blackouts, delusions or obsessions, but he complains of auditory hallucinations. He complains of paranoid and persecutory thoughts “toward everybody.” He feels hopeless and worthless and he has had thoughts of suicide, both recently and in the past with no intentions or plans. He has a history of multiple suicide attempts, but he denies any suicidal thoughts. He is not somatically preoccupied, but he does describe a sleep and appetite disturbance.

* * *

SUMMARY AND CONCLUSION:

Claimant is a 51-year-old male who complains of multiple physical complaints including COPD, asthma, Hepatitis C, high blood pressure, and osteoarthritis. He complains of a long-term history of depression with auditory hallucinations, hearing voices, telling him to hurt himself and others. He has a history of self-abusive behavior and violence towards others. He complains of having constant thoughts of suicide, but he has no intentions or plans. He has a history of multiple suicide attempts. He also has a history of abusing alcohol and drugs, but he denies the abuse of alcohol or the use of drugs in several years prior to his incarceration.

DIAGNOSES:

- (1) Axis I—Major depressive disorder—recurrent with psychotic features;
- (2) History of alcohol and drug abuse in remission.
- (3) Axis V/GAF—50.

PROGNOSIS:

The potential for claimant becoming gainfully employed in a simple, unskilled work situation on a sustained competitive basis guarded. The combination of claimant’s physical distress, along with his psychological condition really interferes with his ability to function at a level necessary for him to obtain and maintain full-time, gainful employment.

* * *

NOTE: The [REDACTED] psychologist did not state that claimant was totally unable to work.

MENTAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

The [REDACTED] psychologist rated claimant in 20 non-exertional/mental capacities. The [REDACTED] psychologist reported that claimant is not significantly limited in 9 categories. He has moderate limitations in 7 categories. He has marked limitations in 4 categories.

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), light cleaning, laundry and grocery shopping.
- (7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.
- (8) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant alleged disability based on several mental impairments (auditory hallucinations, paranoid and persecutory thoughts towards everybody. However, the report of the consulting EDD. Psychologist reported four areas of nonexertion/mental capacities that were markedly limited (the ability to complete a normal workday, the ability to understand detailed instructions, the ability to carry out detailed instructions, and the ability to perform activities with a schedule. However, the consulting EDD psychologist did not state that claimant was totally not able to work. There is no evidence in the record that claimant has received an off work order based on his mental impairments.
- (9) The probative medical evidence, standing alone, 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 this record of an off work notice from claimant's primary care provider.
- (10) Claimant has filed an application with the Social Security Administration for SSI benefits. There is no information on the status of claimant's SSI application at the time of hearing.

CONCLUSIONS OF LAW

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).

The department evaluates mental illness as a basis for disability by evaluating the following nonexertional/mental capacities:

(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 and 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)** 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).

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/BEM 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. Claimant must establish a combination of impairments which profoundly limit his ability to do basic work activities in order to qualify for disability benefits.

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. PEM/BEM 260/261.

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 at least 12 months, until it prevents all basic 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).

SHRT applied the *de minimus* rule in evaluating claimant's eligibility under Step 2. Under this rule, 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.

However, SHRT did review claimant's eligibility under Listings 1.01, 12.01, and 11.01. SHRT decided that claimant does not meet any of the applicable Listings.

Therefore, claimant does not meet Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant last worked as a stocker for a party store. This was sedentary/light work.

The medical evidence of record shows that claimant has been diagnosed with COPD and asthma for several years. He has shortness of breath and he tires easily even without exertion. He coughs and wheezes at times. Also, claimant has been diagnosed with Hepatitis C, high blood pressure and osteoarthritis. He has pain daily and constantly. Claimant is using an inhaler to help with his shortness of breath and this provides him with some relief.

Claimant's employment as a party store stocker involved lifting heavy cases of alcoholic beverages. The medical evidence of record establishes that claimant is unable to do heavy lifting required at his previous job as a liquor store stocker.

Therefore, claimant meets Step 4.

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 MA-P/SDA purposes. First, claimant alleges disability based on the following mental impairments: hearing voices for many years, depression, and a tendency to isolate himself from others. Also, claimant has no interest or motivation, but he does enjoy smoking cigarettes. Although claimant does have some physical limitations (primarily COPD and

asthma), the medical evidence of record does not show that claimant is totally unable to perform sedentary work.

Third, claimant alleges disability based on pain and swelling in the joints of his hands, legs and ankles from osteoarthritis. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/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 claimant's mental and physical impairments taken as a whole. Claimant can perform numerous activities of daily living. Furthermore, 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] and as a janitor doing light cleaning.

For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED] published by the [REDACTED] at 20 CFR 416.967.

Unskilled sedentary work includes working as a ticket taker for a theater, as a parking lot attendant, as a janitor, or as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/SDA application, under Step 5 of the sequential analysis, as presented above.

Finally, the Administrative Law Judge is not able to award disability benefits to claimant because he is acting against medical advice (AMA) due to a voracious smoking habit which exacerbates his COPD and possibly other physical impairments as well.

The department has established, by competent, material and substantial evidence on the record that it acted in compliance with department policy when it decided that claimant is not eligible for MA-P/SDA. Furthermore, claimant did not meet his burden of proof to show that the department's denial of his application was reversible error.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application.

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. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis as described above.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby, AFFIRMED.

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 8, 2011

Date Mailed: July 11, 2011

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

cc:

