

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: 2010-40013
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2010
Alger 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 July 22, 2010, in Munising on July 22, 2010. Claimant personally appeared and testified under oath.

The department was represented by Corey Cromell-Merrick (ES).

By agreement of the parties, the record closed on July 22, 2010.

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 (March 4, 2010) who was denied by SHRT (July 2, 2010) due to claimant's ability to perform unskilled work. SHRT relied on 20 CFR 416.968(a), as a guide.

(2) Claimant's vocational factors are: age--53; education--high school diploma; post high school education--none; work experience--self-employed jack of all trades who performed odd jobs (painting and plumbing work).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 1990 as a plumber.

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

- (a) Inability to do any work;
- (b) Depression;
- (c) Chronic stress;
- (d) Gets scared when he attempts to work; and
- (e) Eye dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (July 2, 2010)

SHRT decided that claimant was able to perform unskilled work. SHRT evaluated claimant's eligibility using SSI Listing 12.09. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on 20 CFR 416.968(a) due to claimant's ability to perform unskilled work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, mopping, vacuuming, laundry (needs help) and grocery shopping. Claimant does not use a cane, walker, wheelchair, or shower stool. He does not wear braces. Claimant was not hospitalized in 2009 or 2010 as an inpatient.

(7) Claimant does not have a valid driver's license and does not drive. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) A May 14, 2010 psychiatric/psychological consultative medical report was reviewed.

The Ph.D. psychologist provided the following history:

Asked the nature of his disability, claimant explains that he is "unable to do stuff." He went on to explain, "I try to do what I can but I get scared of doing some stuff." Asked to describe how he is scared, "Well I've done a lot of different kinds of work, like say somebody wants me to put a door on; I'd start that and it should be easy but it bothers me and I might screw it up or something you know." Asked how long he has had this fear, he reports it has probably been a few years, "It's been a long time since I've had a real job." He thinks that his last real job was in 1990 doing plumbing. He reports he was laid off. Asked if he had any trouble during that job, he denies he did. He reports, "I was laid off because they didn't have enough work." He then went to Minnesota; he lived with his brother for a while, for a couple of years. Asked if he worked there, "Well I helped him around the house you know."

Claimant is asked what his physical health is like, "Pretty good except I know I don't eat enough. I have to force myself to eat. I want to eat but I probably used to weigh 30 pounds more." He is asked how long he has been losing weight; he thinks it was for the last couple of years. He is asked if he drinks alcohol on a regular basis, he reports that he does. Asked how often he drinks, "Well, I think it's actually gone down because I can't afford it." He reports, "My friends will say hey come on over and have a beer you know." He indicated that he goes to friends' homes. He

has beer with them. He does this on a daily basis and drinks about 4-8 beers per day. He is asked if he ever drinks liquor. He reports he tries to avoid liquor as that will "mess me up." He reports he last used liquor about 2 weeks ago. Claimant reported that this was also at a friend's home. He reported he went to his friends': He didn't have any beer at all; all he had was brandy so...

Claimant is asked what happens if he does not drink", he reports: "I still don't have an appetite, I just kind of lay around." He reports that he drinks "to get out and talk and things like that."

Later, when he is asked about his trouble doing the work that he used to be able to do better, he indicated the occasion of trying to put in a screen door. He commented, "Well like that screen door, I have trouble thinking, I really have to think and sometimes I really have to read the instructions and I never used to have to read the instructions but I did do a screen door the other day and I got the box out and I sat down and I read the instructions and then I went back and I had a couple of beers and then I read the instructions and then I went back (to put in the door) and I forgot the instructions and then I went back and got the instructions."

* * *

Asked to describe his mood, "Oh Yeah I get depressed." Asked how he knows when he is depressed, "I don't know, sometimes I'll find a place to go and lay down and stare up into the sky and sometimes I take a walk in the park and look for the stones of people, my brothers and my grandpa. I'll go down by the lake and sit around." He denies he has ever been suicidal. He denies he has ever hurt himself on purpose.

TREATMENT/MEDICATIONS:

Claimant is not under a doctor's order. He reports he takes no medications other than over the counter Aspirin "because I get headaches." He estimates he has headaches about two times per week. He buys them at the [REDACTED] store [REDACTED] and I take three of them because it seems to work." Asked how often he is getting a headache, "Well sometimes only I get one every other week and sometimes every day but not every day very often and I

think it depends on what kind of situation I'm in when I worry about work like that screen door."

Claimant denies psychiatric or psychological interventive treatment. He denies history of them. He denies psychiatric hospital stays. He reports that he has been ordered into substance abuse treatment in the past. He commented: "but I flunked it." Asked why: "Well I just quit going because I couldn't afford to go." He is asked if he had to pay for the program, he denies he did: "No I just couldn't afford to get there and they wanted me to go three to four times a week and I just quitted it and then I had to go to jail because I quit." He reports he was ordered into jail for 180 days but served 94 days and was discharged. Asked what he was charged with in the first place: "I was driving a snowmobile and drinking." He indicates this was about three to four years ago "and it took me awhile for me to get sentenced because I tried the program but then I flunked out of it." Claimant reported at jail, "They kind of liked me in the jail because I kept the younger kids under control." He reported: "and I worked every day and every day you worked, you got credit and a day off."

DAILY FUNCTIONING/SOCIAL FUNCTIONING:

Claimant reports he is homeless: "pretty much I'm not living anywhere." He commented: "I'm sneaking around, I stay at different places." He reports last night he went to the sheriff's department and they gave him a voucher to stay at a motel. He reported: "Because I've been sneaking into a garage and covering up with insulation." He commented: "and I don't want to really tell you where because I don't want that to stop." He commented that he does not have any relatives around that he can stay with. Asked who he will stay with tonight: "I don't know." He is asked if he can go back and get another voucher: "I don't know, I don't know, maybe." He stated: "They told me there was a place I could stay in [REDACTED] but I don't want to be in [REDACTED], I don't know anybody around here." He is asked if he stays with his friends. He reports he does once in a while. Asked when he last had his own place, he commented: "Well I used to live with [REDACTED], we lived as friends about three months ago but she lost her house, she couldn't afford it anymore and now she's in a little place."

* * *

ACTIVITIES:

Asked to describe his day yesterday: “Okay, I got up and I was out at [REDACTED] and I was in this little shack he’s got out there and there’s a little [REDACTED] cook thing out there and I cooked [REDACTED] in the morning and I ate that and then I threw some wood into the fire and then I took a ride into town with [REDACTED] around 10:30 and I walked over to [REDACTED], and I had a cup of coffee and a couple of beers and then I walked to another friend’s house and had a cup of coffee and a couple of beers over there and watched TV for a few hours and then I went out and got a pizza at the grocery store. It was a [REDACTED] pizza and I took it to [REDACTED] house and cooked it, and then we went to the sheriff’s and I got a voucher for the motel room and [REDACTED] walked over with me and we watched television and then I went to sleep but I don’t sleep steady.

* * *

ATTITUDE AND BEHAVIOR:

He is in contact with reality. Self-esteem is low. Motor activity is within normal limits. He is pleasant, tearful and distressed. He appears emotionally autonomous. His motivation is adequate. He does not exaggerate nor minimize symptoms. Insight is fair.

STREAM OF MENTAL ACTIVITY:

Speech is spontaneous, coherent, and logical. He reports lack of self confidence which he has encountered for the last few years with trouble following instructions and trouble completing tasks that would have been easy for him in the past. IQ testing would be helpful to determine the extent/presence of areas of difficulty.

ADDITIONAL INFORMATION:

Included in his file are activities of daily living where he reports he does various general household chores, may eat simple foods which he can prepare, has no regular routine, feels tired all the time, “I just feel like there’s no help.” Clinical notes in the file indicate he was diagnosed with alcohol dependence. They note him to be “honest,

hardworking, lots of friends, makes friends easily.” Notes are dated 2008.

FORMULATION DIAGNOSIS:

Axis I: Alcohol dependence; cognitive disorder NOS.

* * *

Axis V: GAF--48.

(9) 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. The clinical evidence provided by the Ph.D. psychologist shows the following diagnoses: Axis I: alcohol dependence; cognitive disorder/NOS. Axis V/GAF--48 (marked impairment).

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions. The medical records do show that claimant does not take any medications except for Aspirin which he uses to control his headaches. Claimant reports that he has never been hospitalized psychiatrically. He does not report any current medical impairment except eye dysfunction which has not already been clinically documented.

(11) Claimant thinks he is eligible for MA-P/SDA because he has difficulty focusing on the odd jobs which he likes to do sporadically for income.

(12) Claimant has not applied for federal disability benefits with the Social Security Administration (SSA). Claimant stated he was unable to apply for benefits because he did not know what the procedure was and he did not have the assistance to file an SSI claim with the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant is a 53-year-old male who has a high school diploma and a work history of self-employment doing odd jobs. He has the following health issues: eye dysfunction and inability to focus for long periods in order to perform work activities.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity (RFC) to perform unskilled work.

The department denied disability 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).

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).

...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).

...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).

...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).

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).

...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 and 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. PEM/BEM 260, pages 8 and 9.

Claimants, who are working and 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.

Claimant meets the Step 1 eligibility 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 from the date of application. 20 CFR 416.909.

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

If claimant does not have an impairment or combination of impairments which profoundly limit his physical or mental ability to do basic work activities, he does not meet the Step 2 criteria. 20 CFR 416.920(c). SHRT found that claimant meets the severity and duration requirements.

Claimant meets the Step 2 eligibility 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.

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 previous work was performing odd jobs (painting and plumbing repairs). Claimant's previous work was light work.

The Medical/Vocational evidence of record shows that claimant retains the physical ability to perform his last work as a self-employed painter and plumber. While there is some evidence that claimant is unable to perform complex repairs, the evidence does indicate that he is able to perform simple repairs.

Since claimant is able to return to his previous work as a self-employed painter and plumber, he meets the Step 4 eligibility test.

STEP #5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. 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]. [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work (SGA). Claimant is unable to perform skilled work because of his memory dysfunction and a reduced ability to concentrate on the task at hand. This may be partially related to claimant's alcohol intake, but it is unclear based on the current medical record. Notwithstanding claimant's medical limitations (problems with concentration and focus) claimant is able to do simple unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant, or as a greeter for [REDACTED].

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his inability to concentrate on complex repair projects. Claimant currently performs many activities of daily living, has an active social life with many friends in Munising and is very creative in finding low cost places to sleep. Taken collectively, the evidence shows that claimant is able to perform unskilled secondary work (SGA).

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 action is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: August 23, 2010

Date Mailed: August 23, 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

cc:

