

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: 2010-49157
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 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 September 16, 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.

By agreement of the parties, the record closed on September 16, 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 (April 16, 2010) who was denied by SHRT (August 24, 2010) due to claimant's failure to establish an impairment which meets the department's MA-P/SDA duration requirements.

(2) Claimant's vocational factors are: age--48; education--8th grade; post high school education--GED and a master gardener certificate from [REDACTED]; work experience--steel cutter at [REDACTED] and farm laborer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked at Harvard Steel as a steel cutter in 1995.

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

- (a) Rheumatoid arthritis;
- (b) Bipolar disorder;
- (c) Arm pain;
- (d) Wrist pain; and
- (e) Ankle pain.

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

OBJECTIVE MEDICAL EVIDENCE (8/24/2010)

MEDICAL SUMMARY:

Claimant was diagnosed with rheumatoid arthritis (RA) in 2008, while incarcerated. He has a history of addiction to prescription narcotics, marijuana, heroin, cocaine and alcohol. He reported his last use was in 1989 (page 24) but later admitted to using marijuana two days prior to the exam. In March 2010, the claimant had slight swelling at the MCP joints on the left and bilateral localized tenderness at the MCP joints. He had generalized swelling of the left knee with decreased range of motion and painful movements. There were no deformities (page 23).

Claimant was admitted 7/26/10 to 8/03/10 due to pain and weakness due to RA. He was also found to be anemic and did receive a blood transfusion. He was restarted back on methotrexate and Remicade. He did get some relief from his RA and was feeling somewhat better and was discharged (Records from [REDACTED]).

ANALYSIS:

Claimant has a history of RA and was treated in prison for this until his release. In 3/10, he sought treatment for his RA. He had some generalized swelling of some joints, some tenderness, decreased range of motion and pain. Because he didn't have insurance, he was not started back on his regular medications until he was admitted in 7/10. His condition was improving with treatment and did not prevent all types of work for 90 days or more.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking (sometimes), dishwashing (sometimes), and grocery shopping (needs help). Claimant does not use a cane or a walker. He uses a wheelchair approximately 30 times a day. He does not use a shower stool. He wears a splint on his wrists approximately 15 times a month. Claimant was not hospitalized in 2009. In 2010, he was hospitalized for seven days due to rheumatoid arthritis.

(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:

The medical evidence is summarized in Paragraph #5, above.

(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. Claimant thinks that he is disabled due to bipolar disorder. However, there is no

clinical evidence in the record from a Ph.D. psychologist or psychiatrist to establish a severe mental disorder.

(10) The probative medical evidence, standing alone, does not establish an acute physical/exertional impairment expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has a diagnosis of rheumatoid arthritis. Claimant was successfully treated for his arthritis in March 2010. The physicians who have examined claimant do not state, unequivocally, that the claimant is totally unable to work.

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

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).

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).

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.

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 260/261.

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.

Therefore, claimant meets Step 1.

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. The durational requirement for SDA is 90 days. PEM/BEM 261.

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 decided that claimant does not meet the severity and duration requirements under the *de minimus* test.

Claimant does not meet Step 2.

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.

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 steel cutter for [REDACTED]. This was heavy work. Based on claimant's recent medical reports he is unable to do the lifting, standing and bending required of his previous job at [REDACTED].

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. For purposes of this analysis, we classify jobs as 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, established that claimant is able to perform unskilled sedentary work. Notwithstanding claimant's physical limitations

(rheumatoid arthritis) he is able to work as a ticket taker for a theater, as a parking lot attendant, as a janitor or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to return to his return to work was chronic arm, wrist, hand and ankle pain. 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 credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

Although claimant's pain medications do not totally eliminate his pain, they do provide some relief. The record does show that claimant is able to perform some basic activities of daily living. Although claimant is occasionally confined to a wheelchair, this does not prevent him from working outside the home.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his bipolar disorder, rheumatoid arthritis and chronic body pain. Claimant currently performs the basic activities of daily living, and attends his medical appointments. The collective evidence in the record shows that claimant is able to perform unskilled sedentary 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/BEM 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.

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

Date Signed: October 22, 2010

Date Mailed: October 25, 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:

