

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 2010-50962
Issue No.: 2009; 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 30, 2010
DHS County: Ingham

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 Lansing on September 30, 2010. Claimant personally appeared and testified under oath.

The department was represented by Jeanne Lugo (Lead Worker).

By agreement of the parties, the record closed on September 30, 2010.

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

1. Did the 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 29, 2010) who was denied by SHRT (September 1, 2010) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.25 as a guide.

2. Claimant's vocational factors are age – 19; high school education – 11th grade; post high-school education – [REDACTED], majoring in welding; work experience – never worked.
3. Claimant has never performed Substantial Gainful Activity (SGA).
4. Claimant has the following unable-to-work complaints:
 - a. Bad back;
 - b. ADHD;
 - c. Bi-polar disorder;
 - d. Schizoid disorder;
 - e. Short-term memory dysfunction;
 - f. Unable to read;
 - g. Unable to do math; and
 - h. Has difficulty remembering his appointments.
5. SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (SEPTEMBER 1, 2010)

SHRT decided that claimant was able to perform normal work activities (unskilled medium work). SHRT evaluated claimant's impairments using SSI Listing 12.01. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied disability based on 20 CFR 416.967 due to claimant's ability to perform unskilled medium work.

6. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair, or a shower stool. Claimant does not wear braces. Claimant was hospitalized once in 2010 for constipation.
7. Claimant does not have a valid driver's license and does not drive. Claimant is computer literate and enjoys playing computer games.
8. The following medical records are persuasive:
 - a. A July 21, 2010, PhD Psychologist consultative evaluation was reviewed. The Psychologist provided the following information:

ALLEGATION OF DISABILITY:

- (1) Learning disability was first diagnosed when patient was in the fourth grade.

- (2) ADHD was first diagnosed when patient was four years old by an unrecalled source.

ACTIVITIES OF DAILY LIVING:

Claimant resides in a home with [REDACTED], his caregiver. Claimant performs light housekeeping. He reports no social groups. He does not do gardening. He cuts the grass and shovels snow. He has no driver's license history. He does laundry. He has no experience in cashing checks or paying bills; his caregiver assists. He does not provide childcare. He walks and exercises. He completes his own grooming, hygiene and dressing with reminders. He does not read. He watches TV. He does not go to the movies. He goes out to eat. He goes shopping for small items. He completes errands, with transportation. He has no experience in making his own medical and dental appointments. He has friends. He visits with friends. He seldom visits with family. He reports his hobbies as "TV, computers and bowling sometimes." He cooks simple meals. The quality of his ADLs is "good" with reminders. The frequency of his ADLs is "fair." He needs reminders.

EMPLOYMENT HISTORY:

Claimant is not currently employed. He has no work history. He reports he has had good relationships with teachers at school. He reports a history of poor relationships with peers at school, "They called me a retard." When asked why he is not working, claimant replied, "My back."

The Ph.D. psychologist provided the following summary:

Claimant's condition is treatable with therapy medical interventions and training. There is no impairment in claimant's ability to understand, recall and carry out simple directions and instructions. There is no impairment in claimant's ability to make judgments with simple work related decisions. There is moderate impairment in patient's ability to understand, recall and carry out complex instructions. There is moderate impairment in claimant's ability to multi task, sequence and process instructions/directions. Claimant is verbal, friendly and pleasant, responds to and creates humor, and smiles easily. There is no apparent

mood disorder. Focus, attention, and persistence is well within normal limits. No ADD or ADHD signs noted. Claimant responded well to all inquiries and tasks. He made transitions easily. His meds are working well, he reports.

DIAGNOSTIC ANALYSIS:

Axis I -- ADHD by history; cannabis dependence.

Axis V – 65.

9. The proffered medical evidence does not establish an acute mental condition that is expected to prevent claimant from performing all customary work functions for the required period of time. The clinical evidence provided by the PhD Psychologist is: Axis I – ADHD by history; cannabis dependence; Axis V – 65. The Psychologist notes that claimant's condition is treatable with therapy or medical interventions and training. There is no impairment in claimant's ability to understand, recall and carry out simple directions and instructions. There is no impairment in claimant's ability to make judgments or simple work-related decisions.
10. The proffered 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 show that claimant complains of a "bad back." However, there is no clinical evidence to establish a severe back impairment that totally precludes all work activities.
11. Claimant recently applied for Federal disability benefits from the Social Security Administration (SSA). SSA recently denied claimant's SSI claim. Claimant filed a timely appeal.

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 (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) 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).

To determine to what degree claimant's alleged mental impairments limit his ability to work under 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 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).

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 a 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 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 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.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a)(3).

If claimant does not have an impairment or a 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 claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets Step 2.

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 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 has no work experience.

Based on claimant's total lack of work experience, claimant is not able to return to a prior job.

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 sedentary, light, medium and heavy. These terms are defined in the [REDACTED] published by the [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.

Notwithstanding claimant's short-term memory impairments, and related mental limitations (he needs to be reminded of appointments), claimant is able to perform simple unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant, as a janitor, or as a greeter for [REDACTED]

During the hearing, claimant testified that a major impairment to his return to work was an unspecified back impairment. Unfortunately, there is no evidence of a severe back impairment in this record that would qualify claimant for the benefits he requests.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his vague and undocumented back impairment. Claimant currently performs extensive activities of daily living, has an active social life with his roommate, and goes to his medical appointments with the assistance of his roommate. The collective evidence of 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.

/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 mailing 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/pf

cc:

