

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-8132
Issue No: 2009; 4031
Case No: [REDACTED]

Hearing Date:
January 7, 2010
Ingham 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 January 7, 2010 in Lansing. The claimant personally appeared and testified under oath.

The department was represented by Sally Wilson (ES).

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 January 8, 2010. Claimant waived the timeliness 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 (July 31, 2009) who was denied by SHRT (December 9, 2009 and January 12, 2010) due to claimant's ability to perform unskilled sedentary work.
- (2) Claimant's vocational factors are: age--38; education—high school diploma; post high school education—attended [REDACTED] for four semesters and obtained an associate degree; attended [REDACTED] for eight semesters and studied writing; work experience—tutor at [REDACTED] and [REDACTED], security guard at [REDACTED] and factory security guard.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when he was a tutor and game room supervisor at [REDACTED] and [REDACTED].
- (4) Claimant has the following unable-to-work complaints:
 - (a) Depression;
 - (b) Anxiety;
 - (c) Social phobia;
 - (d) ADHD;
 - (e) Difficulty following instructions;
 - (f) Chronic fatigue;
 - (g) Needs to take naps on a regular basis.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (December 9, 2009)

MEDICAL SUMMARY:

Claimant had a right ankle fracture in 7/2009 (records from DDS). In 9/2009, claimant's general examination was normal (page 4).

The medical status examination dated 11/2009 showed claimant was quite verbal, pleasant and proper. His speech was clear, coherent and organized with no evidence of hallucinations or delusions. Mood was slightly dysphoric and moderately anxious. Diagnoses included generalized

anxiety disorder, attention deficit hyperactive disorder and dysthymic disorder (records from DDS).

- (6) Claimant lives with his minor daughter eight days a month. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant did not receive inpatient hospital care in 2009 or 2010.
- (7) Claimant has a valid driver's license and drives an automobile approximately eight times a month.
- (8) The following medical records are persuasive:
 - (a) A [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Psychiatric Evaluation was reviewed. Axis I—MDD, recurrent and Axis V/GAF—68. The psychiatrist provided the following impressions:

Thirty five year old divorced white man presented the history of three episodes of major depression—currently third episode (onset 2003) resolving extremely gradually with significant residual distress and hindrance. Second and third episodes closely associated with marital and child separations and patient continues to do with the consequence stressors despite some situational setting. Back pain continues to be a hindrance as well.

Patient does present strength of parental devotion and gratification, goal direction and parental and social support.

NOTE: The psychiatrist did not state that claimant was totally unable to work.
- (9) Claimant alleges the following mental impairments as the basis for his disability: depression, anxiety, social phobia, ADHD, difficulty following instructions, chronic fatigue and the need to take regular naps. Claimant did not provide a DHS-49D or DHS-49E to establish his mental residual functional capacity.
- (10) Claimant does not allege a severe physical impairment or combination of impairments as the basis for his disability.

- (11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. His 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).

The department decides eligibility issues arising out of mental impairments, using the following standards:

(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) Sufficient Evidence:

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).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for the purposes of the MA-P/SDA program. 20 CFR 416.927(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. 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 purposes.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. 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 is expected to result in death, has existed for 12 months and/or totally prevents all current 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).

Using the *de minimus* standard, claimant meets 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 the Listings.

However, SHRT evaluated claimant's eligibility using SSI Listings 1.04, 3.03, 1.06, 7.02, and 12.04. SHRT decided that claimant does not meet any of the applicable SSI 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 was last employed as a tutor and game room supervisor at [REDACTED] and [REDACTED] with the [REDACTED].

Because of claimant's plethora mental impairments (depression, anxiety, social phobia, ADHD, difficulty following instructions, chronic fatigue, and the need to take naps) he is unable to return to his work with the [REDACTED] because of the high level of stress that his teaching and tutoring involves. This means that claimant is unable to return to his previous work as a tutor/teacher for [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.

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 the following mental impairments: depression, anxiety, social phobia, ADHD, difficulty following instructions, chronic fatigue, and the need to take regular naps. The evidence of record from the [REDACTED], [REDACTED], psychiatric evaluation states that claimant has major depression recurring. However, the psychiatrist who evaluated claimant for [REDACTED] did not state that claimant was totally unable to work.

Third, claimant does not allege disability based on a physical impairment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of mental impairments. Currently, claimant performs many activities of daily living (dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, and grocery shopping). In addition, he sees his minor children and he lives with his ten-year-old daughter. Claimant has a valid driver's license and drives an automobile approximately eight times a month. Claimant is computer literate.

Considering the entire medical record as a whole, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform unskilled sedentary work (SGA). In this capacity, he is able to work as a ticket taker for a theater, as a parking lot attendant, or as a greeter for [REDACTED].

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combination of mental impairments. Also, it is significant that there is no off work order from claimant's primary care physician or claimant's psychiatrist in the record. 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 was not eligible for MA-P.

Furthermore, claimant did not meet his burden of proof to show that the department's denial of his MA-P application was reversible error.

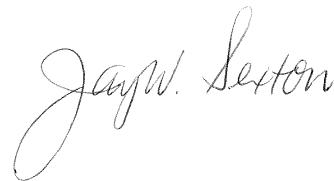
Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis as presented above.

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 BEM 260/261.

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 6, 2011

Date Mailed: July 7, 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:

