

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: 2010-9583
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 20, 2010
Kalamazoo 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, an in-person hearing was held on January 22, 2010, in Kalamazoo. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Deanna Lewis (ES).

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, **continuously**, for 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, **continuously**, for 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 SDA applicant (August 22, 2009) who was denied by SHRT (December 11, 2009) based on claimant's ability to perform his past work as a dishwasher. The disputed eligibility period is August 22, 2009 to January 20, 2010.

(2) Claimant's vocational factors are: age--35; education--10th grade; post high school education--none; work experience--oil and tire change technician, dishwasher.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when he worked as an oil change and tire rotation technician.

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

- (a) Mood swings;
- (b) Depression;
- (c) Overwhelmed;
- (d) Anger management issues;

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

OBJECTIVE MEDICAL EVIDENCE (December 11, 2009)

SHRT decided that claimant was able to perform his past work as a dishwasher. SHRT evaluated claimant's eligibility using SSI Listing 12.04. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on claimant's ability to perform his past work.

(6) Claimant lives with his mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), light cleaning, mopping, vacuuming (sometimes) and grocery shopping (needs help). 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 once a month. Claimant is not computer literate, but he does play video games on the computer.

(8) The following medical records are persuasive:

- (a) A September 17, 2009 psychiatric examination report (DHS-49D) was reviewed. The psychiatrist provides the following information:

* * *

Mental Status Examination:

Hygiene is marginal. Eye contact is good. Not showing any abnormal movements. Thinking is logical, coherent. Denies delusional thinking, active hallucinations and suicidal ideation.

* * *

Daily functioning:

Patient reports his moods are okay. He is generally happy. He is not showing any hallucinations or paranoia. Hygiene is marginal. He reports ADLs are done independently. He lives with mother.

The psychiatrist provided the following DSM diagnoses:

Axis I--history of bipolar disorder; organic mood disorder; polysubstance dependence, in partial remission.

Axis V/GAF--50.

NOTE: Claimant's treating psychiatrist, who evaluated claimant most recently on September 17, 2009, did not state that the claimant is totally unable to work based on his mental impairments.

- (b) A September 16, 2009 Mental Residual Functional Capacity Assessment (DHS-49E) was reviewed.

The psychiatrist reported that claimant is markedly limited in the following six skilled sets:

- (6) The ability to maintain attention and concentration;
- (9) The ability to work in coordination and proximity to others;
- (14) The ability to accept instructions and respond appropriately;
- (15) The ability to get along with coworkers or peers;
- (17) The ability to respond appropriately to change in work settings;

- (20) The ability to set realistic goals or make plans. Claimant had moderate limitations and six other skill sets.
- (c) An August 26, 2009 psychiatric evaluation was reviewed.

The psychiatrist provided the following history:

Claimant claims he stopped taking his Wellbutrin, Tegretol, and Lithium about six weeks ago.

He claims he had issues with caffeine intake. He took a little drink about a 12-pack of cherry coke every day and also will have a couple of jugs of tea. He feels he was washing his medication away. Also, he had been drinking a six-pack of beer in a week's time and some marijuana and methamphetamine in the last two weeks.

Claimant reports his moods are okay. He is generally happy. He is not showing any hallucinations, paranoia. He has been sleeping good, eating good. He is living at home with his mother. He is applying for social security disability, in the process of appeal.

* * *

PERSONAL HISTORY:

* * *

Claimant worked in the fast-food industry from 1998 to 2002. He then worked for an [REDACTED] doing oil changes for a year and a half. He then worked for [REDACTED], doing the same kind of work: tire rotations and oil changes in 2004 and 2005. He has been on Supplemental Security Income at this time. He has not been working.

* * *

He has been in jail a few times for illegal use of chemicals. He was in the [REDACTED] in the late 1990's for about 30 to 40 days. He was in the [REDACTED] in [REDACTED]; that was his last jail stay.

He has used marijuana and methamphetamine and regularly drinks two to three 24 ounce beers three times a week.

* * *

The psychiatrist provided the following diagnoses:

Axis I--history of bipolar disorder, NOS, organic mood disorder; polysubstance dependence in partial remission.

* * *

Axis V/GAF--45/53.

(9) The probative psychiatric evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant thinks he has mood swings, depression, overwhelmed feelings, and anger management issues. However, the treating psychiatrist provided a recent diagnosis of (a) history of bipolar disorder; organic mood disorder; polysubstance dependence in remission. Claimant's GAF in September 2009 was 50. The treating psychiatrist did not state that claimant is totally unable to work due to his combined mental impairments. The DHS-49E (September 16, 2009) states that claimant is markedly limited in six out of twenty of the skill sets evaluated. This diagnosis is apparently related to claimant's failure to take his medications according to his psychiatrist's orders.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not allege disability based on a physical impairment. Claimant did not submit a DHS-49 to establish a severe physical impairment.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security denied his application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to SDA based on a combination of mental impairments (see Paragraph #4 above).

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform his past work as a dishwasher and tire technician.

The department evaluated claimant's mental impairments using SSI Listing 12.04. Claimant does not meet any of the applicable SSI Listings.

The department denied claimant's SDA application because claimant is able to work.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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, 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 or 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).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that his mental impairments meet the department's definition of disability for SDA purposes. PEM 261. "Disability," as defined by 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 SDA.

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 which is expected to result in death, has existed for 12 months and totally prevents all current work activities. 20 CFR 416.909.

Also, to qualify for 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 the severity and duration requirements and 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 the Listings.

However, SHRT evaluated claimant's eligibility using SSI Listings 12.04.

Claimant does not meet any of the applicable SSI Listings and does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant was last employed as a tire rotation and oil change technician. This work was medium work.

The medical evidence of record establishes that claimant does not have physical or mental impairment which precludes him from returning to his previous work as a tire rotation and oil change technician.

Since claimant is able to return to his previous work, he does not meet the Step 4 disability test.

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 a preponderance of the medical evidence in the record that combined impairments meet the department's definition of disability for SDA purposes.

First, claimant alleges disability based on a combination of mental impairments (mood swings, depression, overwhelmed feelings and anger management issues). The consulting psychiatrist reports the following diagnoses: history of bipolar disorder, organic mood disorder,

polysubstance dependence, in partial remission. The treating psychiatrist did not report that claimant is totally unable to work due to his combination of mental impairments. Also, the DHS-49D and DHS-49E submitted by claimant do not establish that claimant is totally unable to work.

Second, 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 impairments. Claimant performs several activities of daily living, has an active social life with his mother and enjoys playing computer games. Also, claimant drives an automobile approximately once a month.

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].

Based on this analysis, the department correctly denied claimant's 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 the record shows that he unilaterally discontinued his psychotropic medications, against the medical advice of his treating psychiatrist.

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 SDA disability requirements under PEM 261.

Accordingly, the department's denial of claimant's SDA application is, hereby, **AFFIRMED.**

SO ORDERED.

/s/

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

Date Signed: June 7, 2010

Date Mailed: June 8, 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

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