

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: 2010-25134
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 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 May 5, 2010, in Kalamazoo. The claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Diana Smits (ES) and Christy Piper (ES).

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/retro/SDA applicant (September 14, 2009) who was denied by SHRT (March 19, 2010) due to insufficient evidence. Claimant requests a closed period of eligibility for the period September through December 2009.

(2) Claimant's vocational factors are: age--49; education--8th; post high school education--none; work experience--dishwasher and roofer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when he was a dishwasher at a local restaurant.

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

- (a) Glaucoma--both eyes;
- (b) Bladder cancer;
- (c) Status post bladder tumor removal (11/09);
- (d) Seizures;
- (e) Hypertension;
- (f) Blind in left eye; and
- (g) Diminished vision in right eye.

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

OBJECTIVE MEDICAL EVIDENCE (March 19, 2010)

SHRT denied MA-P eligibility due to insufficient evidence.

SHRT reviewed claimant's application using Listings 1.01, 2.01, 11.01 and 13.01. SHRT was unable to determine whether claimant met the Listings due to insufficient evidence.

(6) Claimant lives in a homeless shelter. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, dishwashing, mopping, and vacuuming. Claimant does not use a cane, walker, or wheelchair. He uses a shower stool on a daily basis. Claimant was hospitalized in October and November 2009 for bladder surgery.

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

(8) The following medical records are persuasive:

- (a) An [REDACTED] psychiatric/psychological medical report was reviewed.

The Ph.D. psychologist reports the following treatments:

Hospitalizations: was hospitalized for bladder cancer and grand mal seizures during 2009. He has been struggling with seizures for the past eight to nine months.

PERSONAL HISTORY:

* * *

Claimant attended the public schools in [REDACTED] until he was eight or nine years old. He reported that he dropped out of school because there was too much fighting and gang activity in school. Claimant never returned to school. He reported that school was difficult for him and dangerous at the time.

* * *

The Ph.D. psychologist provided the following DSM Diagnoses:

Axis I--Major depressive disorder, recurrent, severe without psychotic features.

Axis III--Glaucoma; seizure disorder; high blood pressure; cancerous tumor removed from bladder in 2009;

Axis V/GAF--40. (Marked mental impairments)

The Ph.D. psychologist provided the following prognosis:

Medical Source Statement: Claimant's symptoms are severe and would disrupt his ability to interact with others in a healthful and productive manner, including co-workers, supervisors and the public. He appears to have limited concentration and comprehension abilities, which would disrupt his ability to perform in a work environment. Claimant appears to be sensitive to stress and would likely have problems adapting to work stressors in a healthful manner. He is clearly limited in his mental capacity at this time.

* * *

A [REDACTED] Internal Medicine Exam was reviewed.

The physician provided the following information:

CHIEF COMPLAINTS:

Back pain, glaucoma, seizures and bladder cancer.

HISTORY:

Claimant has a history of seizures for what he states is a 'long time.' He states that he is on Dilantin. He states that his last seizure was about 1-2 months ago. He states that he has had seven seizures in the past year. He denies any pre aura sensation, and post ictal he is lethargic and dizzy. He does have tonic clonic manifestations and loss of consciousness. He does have bowel and bladder incontinence. He has had lacerations to his tongue. He denies any fractures. He does not recall his last EEG.

* * *

Claimant also relates a history of glaucoma. He is on eye drops. He has no vision to the left eye and minimal vision in the right eye. He does not use a walking stick.

The claimant also states that he has not worked since 2005. He used to work for a roofing company and stopped working because of his vision loss and seizures.

He now lives with his family in a house. He can do his activities of daily living. He does not drive, cook or do any household chores. He now mostly 'hangs out' and eats. He states that he can walk 'not far.' He denies any problems sitting or standing. He states that he cannot lift anything.

* * *

The consulting internist provided the following conclusions:

- (1) Seizures: I do not find any focal neurological deficits today. The cause of his seizures presumably is unknown. He had minimal difficulty doing orthopedic maneuvers.
- (2) Glaucoma: This appears to be his main issue where he had had minimal vision. He was able to navigate around the room with some difficulty. He would benefit from the use of a vision cane. He was still able to do manipulative tests. Unfortunately, from a vision standpoint, his long-term prognosis is poor due to lack of remediability.

* * *

(9) The claimant alleges disability based on severe major depressive disorder, recurrent, severe. The medical evidence provided by the consulting Ph.D. psychologist states that claimant has a diagnosis of major depressive disorder, recurrent, severe without psychotic features. Claimant has a Ph.D. prognosis of severe symptoms that would disrupt his ability to interact with others in a healthful and productive manner, including co-workers, supervisors and the public. He appears to have limited concentration and comprehension abilities, which would also disrupt his ability to perform in a work environment.

(10) Claimant had bladder surgery in 2009 to remove a cancerous tumor. He has a history of chronic seizures. In 2009, he had approximately seven seizures. In addition, claimant has severe glaucoma and status post bladder cancer.

(11) **On July 20, 2010, the Social Security Administration approved claimant for SSI with a disability onset date of January 2010. The Social Security action was apparently based on claimant's combination of impairments, but focuses significantly on claimant's bladder cancer, chronic seizure disorder, and severe bilateral vision due to claimant's glaucoma. SSA also considered the Ph.D. psychologist's diagnosis of major depressive disorder, recurrent, severe without psychotic features. The Ph.D. psychologist also reported a GAF of 40.**

CONCLUSIONS OF LAW

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).

To determine to what degree claimant's mental impairments limit claimant's 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 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 each particular case. SSA recently established a disability onset date of January 2010.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does meet the MA-P/SDA disability requirements for a closed period of eligibility (September 2009 through December 2009).

The Administrative Law Judge relies heavily on the SSI approval recently made by the Social Security Administration and an SSI disability onset date of January 2010. Since claimant was hospitalized in October and November for bladder cancer and bladder surgery, there is a strong presumption that the conditions which led to the SSI approval were also present for the closed eligibility period of September 2009 through December 2009. [**Therefore, claimant's MA-P/SDA onset date is September 2009**].

Based on the medical evidence of record, claimant has a lifetime disability (due to his glaucoma, status post bladder cancer and depression). This combination of impairments clearly existed, in a severe configuration starting in September 2009.

Accordingly, the department's denial of claimant's MA-P/SDA application for a closed period of eligibility from September to December 2009 is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: September 22, 2010

Date Mailed: September 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:

