

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: 2010-47749
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 14, 2010
Montcalm 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 14, 2010, in Stanton, Michigan. The claimant personally appeared and testified under oath.

The department was represented by Rick Stilson (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

By agreement of the parties, the record closed on September 14, 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/retro/SDA applicant (June 7, 2010) who was denied by SHRT (August 19, 2010) due to claimant's ability to perform unskilled work. The department relied on 20 CFR 416.968(a). Claimant requested retro MA for March, April and May 2010.

(2) Claimant's vocational factors are: age--35; education--high school diploma; post high school education--has a [REDACTED]; work experience--temporary job removing labels from boxes, temporary job working as a flagman on a road repair crew and temporary job as a wood treatment technician.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when he worked for a temporary service removing labels from boxes.

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

- (a) Major Depression; and
- (b) Schizoid personality disorder;

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

OBJECTIVE MEDICAL EVIDENCE (8/19/2010)

SHRT decided that claimant is able to perform normal work activities. SHRT evaluated claimant's impairments using SSI Listing 12.01. SHRT decided that claimant does not meet the applicable listing. SHRT denied disability based on 20 CFR 416.968(a) due to claimant's ability to perform unskilled work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant was not hospitalized as an in-patient in 2009 or 2010.

(7) Claimant has a valid driver's license and drives an automobile approximately 8 times a month. He also has a [REDACTED] ([REDACTED]). Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] report was evaluated. The physician provided the following diagnoses:

- (1) Hypertension;
- (2) Abnormal LFTs;
- (3) Hyperlipidemia.

NOTE: The physician did not state the claimant was totally unable to work due to his physical impairments.

(b) A [REDACTED]. The psychiatric evaluation was reviewed.

The physician provided the following background:

Claimant is a 35-year-old white male who was never married and currently lives with his father. Claimant is unemployed and states he's worked about 53 jobs since 1994 but has a very difficult time keeping jobs. He currently has no insurance or income. Reports not doing much at all.

Chief complaint:

'I'm depressed.'

HISTORY:

Claimant reports over the past year that he's 'given up.' He's very frustrated over the fact that he has a very difficulty time keeping jobs. Reports he has a very difficult time getting along with others. Really in particular doesn't like to be around others and prefers to be alone. He does display symptoms consistent with Schizoid Personality Disorder as he really has no friends at all. Doesn't

particularly care for any of his family members other than perhaps his dad, but states that they really don't talk despite the fact they live together.

* * *

Doesn't feel that the [REDACTED] or anyone else in particular watches him or monitors him. There is no suicidal or homicidal ideation. He does report in the past he's had thoughts of wanting to harm an ex-girlfriend as well as perhaps DHS, but that doesn't apply currently. Does have some occasional thoughts that life isn't worth living. He denies being depressed although his affect is quite flat. He does admit to some mood irritability, problems with concentration, anhedonia, feelings of hopelessness and helplessness and some sleep difficulty, stating he has a hard time maintaining sleep.

Past Psychiatric/Substance Abuse history and Psychotropic Medication Use:

Claimant denies any prior psychiatric hospitalizations. No prior suicide attempts. No current suicidal ideation, intermittent periods of thoughts that life isn't worth living. He has had major depressive disorder in the past. Denied any history of manic symptoms. Denied any history of auditory or visual hallucinations, delusions of references, thought broadcasting, mind reading or paranoia. Occasionally reports some worry, but not excessively so. Denied any history or drug or alcohol problems. States he rarely drinks alcohol, maybe one time per year. Does not smoke and has never tried marijuana or any other illicit substances. Denies ever being on any medications for psychiatric reasons.

Claimant didn't do all that well in school, mainly C's and D's. Did go to truck driving school. Has had multiple jobs in the past, but cannot really keep them. States he's had 53 jobs since 1994. He did keep a job for 4 years from 1998 to 2002 but really has been fired multiple times since then because he doesn't get along with others.

Mental Status Evaluation:

Claimant is a 35-year-old white male who looks about his stated age. He has very short brown hair. He is well-shaven. He was casually dressed in a green T-shirt, jeans and tennis shoes. He weighed in at 270 pounds. He made good eye contact. Overall was cooperative, some psychomotor retardation noted. His speech was somewhat monotone but nonpressured and understandable. His mood was reported actually to be good other than some intermittent periods of irritability. His affect was flat. His thoughts were organized. No suicidal or homicidal ideation. No thoughts that life isn't worth living. He is future oriented. Denied any auditory or visual hallucinations, delusions of references, thought broadcasting, mind reading. No current paranoia. He has fair insight and judgment. Attention and memory is grossly intact. He is alert and oriented times three out of tree.

DSM DIAGNOSIS

Axis I--Major depressive disorder, recurrent, mild rule out (R/O) Dysthymic Disorder.

Axis V--GAF-45.

PROGNOSIS

NOTE: The Ph.D. psychologist did not state claimant is totally unable to work due to his mental impairments.

(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. The [REDACTED] provided the following diagnosis: Axis I--Major Depressive Disorder, recurrent, mild; rule out dysthymic disorder.

* * *

Axis V/GAF--45.

(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 show that claimant has the following impairments: Hypertension; abnormal LFTs; Hyperlipidemia.

(11) Claimant thinks he is eligible for MA-P/SDA because of he has a difficult time getting along with people and has had multiple jobs (53) in the past, but can't really keep them.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration (SSA). His application is currently pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA because of he does not like working with people and is unable to hold a job.

DEPARTMENT'S POSITION

The department thinks that claimant has a residual functional capacity to perform unskilled work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. Claimant's most recent physical diagnoses are hypertension, and abnormal LFTs. Claimant's family doctor did not state that claimant is totally unable 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).

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.

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 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 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 previously worked in a box factory removing labels. This was light work.

The Medical/Vocational evidence of record shows that claimant does not have a severe physical impairment. He has a normal ability to lift, stand and walk. Claimant is not precluded from performing substantial gainful activity due to a physical impairment.

The medical evidence in the record does show that claimant has a diagnosis of major depressive disorder, recurrent and mild; and rule out dysthymic disorder. Claimant reports a chronic inability to get along with his work mates.

However, the psychiatrist who most recently evaluated claimant did not report that claimant was totally unable to work. He did suggest that claimant try to find a job that would work for him.

Therefore, claimant does not meet 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]. [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. Although claimant has had a chronic habit of losing his temper and therefore, his job, his current psychiatrist suggests that he is able to overcome this quirk. There is nothing in the record that would preclude claimant from working as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED], if he made a concerted effort to control his temper. It should be remembered that even though claimant has a mild mental impairment (major depressive disorder, recurrent, mild), he is able to do many activities of daily living. Also, he has a commercial driver's license and has recently applied for several truck driving jobs.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his major depressive disorder (mild). Claimant currently performs many activities of daily living, has a social life with his father, and goes to his appointments with his medical doctor and psychiatrist on his own. The collective evidence of record shows that claimant is able to perform unskilled sedentary work (SGA), if he chooses to manage his temper tantrums.

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

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 is, hereby, **AFFIRMED**.

SO ORDERED.

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

Date Signed: October 12, 2010

Date Mailed: October 12, 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:

