

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: 2010-9290
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 21, 2010
Genesee 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 21, 2010, in Flint. Claimant personally appeared and testified under oath.

The department was represented by Kimberly Melton-Widing (ES).

ISSUE

Did the department establish medical improvement to the extent claimant is now able to work and no longer eligible for 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 recipient. Claimant was approved for SDA in April 2009, with a review date of July 2009. On September 24, 2009, MRT denied ongoing SDA.

(2) On December 8, 2009, SHRT reviewed claimant's SDA case and determined that claimant was no longer eligible for SDA. SDA was denied by SHRT because the nature and severity of claimant's impairments no longer precluded work activity (unskilled, semi-skilled work, medium unskilled work).

(3) Claimant's vocational factors are: age--25; education--12th grade; post high school education--GED; post high school education--claimant completed five semesters at [REDACTED]; claimant last worked as a line worker for [REDACTED], he also worked as a secretary for an [REDACTED].

(4) Claimant has not performed substantial gainful activity since 2009 when he worked for [REDACTED].

(5) Claimant has the following unable-to-work complaint: Obsessive-compulsive disorder.

(6) Claimant was previously approved for benefits based on his obsessive-compulsive disorder.

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

OBJECTIVE MEDICAL EVIDENCE (December 8, 2009)

* * *

A mental status in 5/09 showed the claimant had a history of polysubstance abuse but reported that he had been clean since 1/09 (page 23). He was spontaneous, well-organized and relevant to topic (page 24). There was no evidence of hallucinations or delusions. His mood was friendly throughout the evaluation. He stated he had anxiety and panic attacks (page 25). Diagnosis included generalized anxiety disorder, obsessive compulsive disorder (OCD), bipolar disorder and cannabis dependence (page 26).

Claimant was diagnosed with Hepatitis C virus, infection marked in 1/2008. 1/2009, BUN was 16 and Hepatitis C viral load was 346,000 (page 29). His total bilirubin in 1/2009 was 0.5 well within normal limits (page 34).

In 3/2009, claimant's physical examination was within normal limits, except for tenderness to palpitation of the vertebral region mid to lower spine (page 82).

ANALYSIS:

The claimant has a history of substance abuse, OCD and bipolar disorder. In 5/09, he was spontaneous, well organized and relevant. He was friendly, but anxious. He has Hepatitis but his physical examination was unremarkable except for some tenderness to palpation in the spinal area.

* * *

SDA was denied per PEM 261, because the nature and severity of claimant's impairments no longer preclude work activity at the semi-skilled medium work level.

- (8) A May 30, 2009 mental residual functional capacity assessment prepared by a Ph.D. psychologist and paid for by the Social Security Administration states in pertinent part:

Concurrent claim.

AOB 12. 12/30/2007 Allegations: bipolar, OCD and anxiety. Claimant diagnoses are obsessive compulsive disorder (OCD), Generalized Anxiety Disorder (GAD), Bipolar disorder, Cannabis Dependence, and Poor work history. Long history of drug abuse and drug seeking behavior. Continues to use drugs. IP, OP and Rx treatment. Reports he went through rehab but the reports shows he left early. Lives with girlfriend. He takes care of ADLs independently. Concentration is good but memory is impaired. Symptoms appear well controlled at this time. He has history of aggressive behavior. He has history of some OCD behavior and writes down all his thoughts. **Because of his drug seeking behavior, his statements are not completely credible.** Claimant's overall psychological clinical picture indicates the ability to perform simple/routine tasks.

- (9) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, light cleaning (sometimes), mopping, vacuuming, and

grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant does not wear braces.

(10) Claimant has a valid driver's license but does not drive. Claimant is computer literate.

(11) The probative medical evidence does not establish an acute mental (nonexertional) condition that is expected to prevent claimant from performing customary work functions for the required period of time. SHRT reports there was no evidence of hallucinations or delusions. His mood was friendly throughout the evaluation. He stated he had anxiety and panic attacks. The psychiatrist provided the following diagnoses: Generalized anxiety disorder, obsessive compulsive disorder (OCD) followed by bipolar disorder and cannabis dependence (page 26). The reporting psychiatrist did not state that claimant was totally unable to work. Claimant does not allege a severe mental impairment with a basis for disability. There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49D or DHS-49E to establish mental residual functional capacity.

(12) The probative medical evidence does not establish an acute (exertional) physical impairment that totally prevents claimant from working. A recent physical examination shows the following diagnoses: Hepatitis C virus, infection mild, in 2008. His bilirubin in January 2009 was .5 or within normal limits (page 34). The physician who evaluated claimant did not state the claimant was totally unable to work.

(13) Claimant's most prominent complaint is his obsessive compulsive disorder (OCD).

(14) Although there is abundant evidence in the record that claimant abuses marijuana, he did not admit to any cannabis or alcohol abuse during the hearing.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to a continuation of his SDA based on his obsessive compulsive disorder.

DEPARTMENT'S POSITION

The department thinks that claimant's mental impairment has improved to the point where he is now able to perform semi-medium work. The department thinks that claimant's impairments do not meet/equal the intent or severity of the Social Security Listings.

The medical records provided by the consulting psychiatrist show that his mental status, at the present time, is stable. While claimant continues to have some sequelae related to his obsessive compulsive disorder, the psychiatric evidence does not establish that claimant's psychiatric dysfunction is so severe, that he is totally unable to work.

The department thinks that claimant had significant improvement in his mental status.

The department thinks that the medical evidence of record shows that claimant has the capacity to perform unskilled and semi-skilled and medium work.

Therefore, based on claimant's vocational profile [younger individual (age 25) two years of college education, and unskilled and semi-skilled work] SDA is denied using Med-Voc Rule 203.28 as a guide.

LEGAL BASE

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).

ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY.

Under current SDA policy, the department has the burden of proof to show by a preponderance of the medical evidence in the record that claimant's mental impairments have improved to the point where he is now able to perform Substantial Gainful Activity (SGA). PEM 260/261.

MENTAL IMPAIRMENTS:

The psychological evidence in the record establishes that claimant has significantly improved since he was granted SDA benefits in April 2009. The consulting psychologist hired by the Social Security Administration makes the following statements in his report (May 30, 2009).

* * *

Lives with his girlfriend. He takes care of his ADLs independently. Concentration is good, but memory is impaired. Symptoms appear well controlled at this time. He has a history of aggressive behavior. He has a history of some OCD behavior and writes down all of his thoughts. Because of his drug-seeking behavior, his statements are not completely credible. Claimant's overall psychological clinical picture indicates the ability to perform simple/routine tasks.

PHYSICAL IMPAIRMENTS

Claimant's physical impairments are not severe. A recent report states:

In 3/2009, claimant's physical examination was within normal limits, except for tenderness to palpitation of the vertebral region mid to lower spine.

Based on a careful review of the current medical evidence on claimant's mental status, the Administrative Law Judge concludes that claimant's mental impairments do not totally preclude substantial gainful employment (SGA) at this time.

In short, there is no medical/vocational evidence to establish that claimant is currently unable to work based on his obsessive compulsive disorder.

Based on a careful review of the entire record, the Administrative Law Judge concludes the department correctly decided to cancel claimant's SDA due to medical improvement. Based on the medical/vocational evidence of record, claimant's obsessive compulsive disorder has improved to the extent he is now able to perform unskilled/semi-skilled medium work.

Claimant is currently able to perform Substantial Gainful Activity (SGA) including, but not limited to: work as a ticket taker for a theater, as a carryout clerk for a grocery store, as a parking lot attendant, or as a greeter for [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established the requisite medical improvement to support denial of continued SDA benefits under 261.

Accordingly, the department's action to close claimant's SDA, based on medical improvement, is, hereby, AFFIRMED.

Also, the Administrative Law Judge does not find claimant's testimony at the hearing to be credible and probative.

SO ORDERED.

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

Date Signed: May 18, 2010

Date Mailed: May 19, 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:

