

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-464
Issue No: 2009; 4031
Case No: [REDACTED]

Hearing Date:
December 1, 2010
Lapeer 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 December 1, 2010, in Lapeer. The claimant personally appeared and testified under oath. The claimant was represented by [REDACTED].

The department was represented by Teresa Soper (ES) and Amanda Heusted (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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 (October 22, 2009) who was denied by SHRT (October 14, 2010) due to claimant's ability to perform unskilled medium work.
- (2) Claimant's vocational factors are: age--24; education—high school diploma (special education); post high school education—attended [REDACTED] (studied computer aided graphics); work experience—dishwasher, busboy, gas station operator, machine operator for auto parts company.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2010 when he worked as a dishwasher for a local restaurant.
- (4) Claimant has the following unable-to-work complaints:
 - (a) ADD;
 - (b) ADHD;
 - (c) Status post closed head injury (1993);
 - (d) Short-term memory dysfunction;
 - (e) Depression; and
 - (f) Speech dysfunction.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (October 14, 2010)

MEDICAL SUMMARY

On 8/2010, claimant's affect was blunted. He had problems organizing his thoughts and had slight short-term memory dysfunction. (Pages 4-8) According to the claimant, he is independent in activities of daily living (Pages 18-22).

* * *

- (6) Claimant lives with his elderly grandfather and 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 in 2009 and 2010.
- (7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant does light gardening jobs, including lawn mowing, weed raking and snow shoveling.

(8) The following medical records are persuasive:

(a) An August 19, 2010 Ph.D. psychologist report was reviewed. The Ph.D. consultant provided the following impressions:

* * *

Claimant first experienced symptoms of AD/HD at age seven. He reports having problems with hyperactivity, concentration, focus and memory. He also frequently transposes letters and numbers in his head. He first saw the psychologist after being diagnosed with a closed head injury. He attended weekly counseling sessions, but could not recall whether or if he achieved notable therapeutic gains. He was first prescribed psychotropic medication at age 10. In early adulthood, he sought the advice of his primary care physician, [REDACTED], for depressive and AD/HD symptoms. He was prescribed Concerta for AD/HD and Wellbutrin for depression. He described these medications as very helpful, and admits he requires them in order to sustain employment. He claims he cannot think right without them, and would like to begin a medicinal regimen in the future if he can obtain insurance. He stopped taking them approximately two to three years ago due to losing his medical insurance. Claimant attended outpatient counseling approximately two and a half years ago at [REDACTED] due to severe conflicts with his mother. He attended weekly psychotherapy sessions, and described counseling as very helpful. He admits that he needs additional counseling at this time, and is motivated to make numerous behavioral changes presently.

* * *

MENTAL STATUS EVALUATION:

* * *

Cognitive: Claimant had significant problems organizing his thoughts and the dates of important events. He exhibited slight-short-term memory impairments and significant long-term memory impairments.

* * *

DSM DIAGNOSIS:

Axis I—Major depressive disorder; recurrent.
Attention deficit/hyperactivity disorder, combined type.

Axis V/GAF—55.

SUMMARY:

* * *

Claimant currently suffers from mild depressive symptoms, and severe inattentive and impulsive-hyperactive AD/HD symptoms. He has previously addressed these symptoms through medication, however lost his medical insurance. He believes these medications are imperative to improve his social, emotional and occupational functioning. Claimant is motivated to return to outpatient counseling, and admits he requires numerous cognitive and behavioral changes. He is socially isolated at this time, and is fearful of unfamiliar social contacts. His ability to relate to others is limited by a depressed mood, insufficient motivation and embarrassment/confusion related to family conflict and his sexual preference. He has identified short- and long-term educational and employment goals, and believes he will be capable of working in the near future.

* * *

NOTE: The examining consulting Ph.D. psychologist did not state that claimant was unable to work.

- (9) Claimant alleges a disabling mental impairment based on the following diagnoses: major depressive disorder, recurrent; attention deficit/hyperactivity disorder, combined type; Axis V/GAF—55. The probative medical (psychological) evidence does not establish an acute mental impairment, or combination of mental impairments, which are expected to prevent claimant from performing all customary work functions for the required period of time. While the psychological records do establish that claimant has some learning disabilities and behavioral issues, these diagnoses do not prevent claimant from performing unskilled sedentary work. At this time, however, there is no probative medical evidence to establish a severe disabling mental condition that totally precludes all sedentary work activities. The medical records do establish

that claimant has some mental limitations. In short, at this time, there is no probative medical evidence to establish a severe disabling condition that totally precludes all sedentary work activities.

- (10) The claimant alleges several disabling physical impairments based on the following diagnoses: Status post closed head injury. The medical records do not establish that claimant's 2008 closed head injury is an acute physical impairment expected to prevent claimant from performing all customary work functions. The medical evidence does establish that claimant's 2008 closed head injury caused claimant to have difficulty completing his assignments in grade school and high school and may have contributed to his difficulty establishing and maintaining personal relationships. However, none of the physicians who evaluated claimant report that he is totally unable to work. Although claimant does have difficulty relating to fellow employees, there is no probative medical evidence, at this time, to establish a severe disabling physical condition that totally precludes all sedentary work activities.
- (11) Claimant's combination of physical and mental impairments makes it difficult for him to complete academic assignments because they present him with stressful situations which are difficult for claimant to handle. Likewise, the combination of physical and mental impairments makes it difficult for claimant to work in essentially physical occupations (dishwasher, etc.) because of the stressful work settings which are involved.
- (12) The claimant recently applied for federal disability benefits (RSDI/SSI) with the Social Security Administration. His application was denied. Claimant filed a timely appeal.
- (13) Although claimant is unable to work in employment situations that have high academic demands or a stressful environment, claimant is very capable of working as a chore services provider. He currently provides chore services for his elderly grandfather: Housecleaning, chauffeuring to doctor appointments, and chauffeuring to the grocery store. Claimant helps his grandfather get dressed, remember his medications and eat his meals on a regular basis.

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically

acceptable clinical and laboratory diagnostic techniques....
20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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.

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 Step 1.

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/or totally prevents all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P, 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 the appropriate SSI Listings and decided that claimant does not meet any of the applicable 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 dishwasher at a local restaurant. This was medium work. Because of claimant's intolerance for highly stressful work environments, he is unable to return to his previous work as a dishwasher.

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: ADD, AD/HD and depression. The Ph.D. psychologist who provided the narrative psychological evaluation (August 19, 2010) did not state that claimant was totally unable to work based on the diagnosis of major depressive disorder, recurrent and attention deficit/hyperactivity disorder, combined type.

Second, claimant alleges disability based on the following physical impairments: Status post closed head injury and speech dysfunction. There is no persuasive clinical evidence in the record to establish that claimant is totally unable to work based on his physical condition.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his combined impairments. Currently, claimant performs many activities of daily living for himself. He also provides an extensive list of services for his elderly grandfather including housecleaning, chauffeuring to medical appointments and the grocery store, helping his grandfather get dressed and remember his medications, as well as food planning and meal preparation. In addition, claimant drives an automobile approximately 12 times a month and is computer literate.

Considering the entire medical record, 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, greeter for Wal-Mart, and as a chore services provider for his grandfather.

The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it denied claimant's MA-P/SDA application. Furthermore, claimant did not meet his burden of proof to show the department's denial of his applications was reversible error.

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

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. 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 applications is, hereby, AFFIRMED.

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 25, 2011

Date Mailed: July 26, 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

2011-464/JWS

cc:

