

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg. No: 2007-10538

Issue No: 2009

Case No:

██████████

Load No:

██████████

Hearing Date:

September 13, 2007

Oakland 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 in Pontiac on September 13, 2007. Claimant personally appeared and testified under oath.

The department was represented by Judy Windrin (FIM).

On August 6, 2007 the State Hearing Review Team (SHRT) issued a decision stating that the medical evidence was insufficient to make a determination on disability. SHRT requested a complete physical examination in narrative form from his treating physician if possible, or by a licensed physician. The Administrative Law Judge issued an Interim Order on September 14, 2007 requesting a new medical examination.

Claimant waived the timeliness requirement so SHRT could review his new medical evidence.

ISSUE

(1) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work, continuously, for one year (MA-P)?

(2) Did claimant establish a severe physical impairment expected to preclude him from substantial gainful work, continuously, for one year (MA-P)?

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 a MA-P/retro applicant (March 30, 2007) who was denied by SHRT (August 6, 2007) due to insufficient evidence.

(2) Claimant's vocational factors are: Age—51; Education—high school diploma, [REDACTED]; work experience—hi-lo driver and heavy equipment operator (front end loader, sky track, large fork-lifts and bull-dozers).

(3) Claimant has not performed Substantial Gainful Work (SGA) since he was a fork-lift driver in 2002.

(4) Claimant is 6'2" tall and weighs 200 pounds.

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

- (a) Right side numbness;
- (b) Uses cane to walk;
- (c) Status post stroke (February 2007);
- (d) Hobbles when he walks;
- (e) Able to walk only a short distance;
- (f) Only able to climb a few stairs;
- (g) Unable to taste his food;
- (h) Slow response to questions during conversation;
- (i) Unable to do former activities of daily living at a normal pace;

- (j) Inability to use his right hand for normal activities of daily living (right hand dominant).
- (6) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (AUGUST 6, 2007):

Hospital records of 3/2007 indicate claimant had right hemiparesis secondary to left intracranial hemorrhage. Claimant had some weakness on the right side as well as some decreased proprioception. (Page 20).

Follow-up treatment note of 4/2007 indicated he had some right sided weakness and walked with the aid of a cane.

ANALYSIS: Claimant has had a cerebralvascular accident with some residuals. His physical condition was showing some improvement. However, there are no records in the file that are three months post event. Due to the vocational profile, it is critical to determine how much improvement has occurred, and his current physical condition is critical in determining the correct decision.

- (6) On November 27, 2007, SHRT approved claimant for MA-P.

CONCLUSIONS OF LAW

LEGAL BASIS

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 Family Independence Agency 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 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).

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 purposes. PEM 260. "Disability," as defined by MA-P standards is a legal term which is individually determined by consideration of all factors in each particular case.

Since SHRT has approved claimant for MA-P benefits, it is not necessary for the Administrative Law Judge to rule on the issue of disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant meets the MA-P disability requirements under PEM 260. Accordingly, the department's denial of claimant's MA-P application is, hereby, REVERSED.

SO ORDERED.

The department will review claimant's MA-P eligibility in August 2010.

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

Date Signed: August 10, 2009

Date Mailed: August 11, 2009

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.

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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/sd

cc:

