

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: 2007-18884  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 27, 2007  
Ottawa 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 in Holland on November 27, 2007. Claimant personally appeared and testified under oath. Claimant was represented the hearing by [REDACTED].

The department was represented by Dan Boter (Program Manager).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. The Social Security Administration (SSA) approved claimant for SSI, after the Ottawa County Hearing was held.

ISSUE

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 (January 31, 2007) who was denied by SHRT (September 24, 2007) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requests retro MA for October and November 2006.

(2) Claimant's vocational factors are: age—41; education—10<sup>th</sup> grade; post high school education—none; work experience—janitor for [REDACTED], cashier at [REDACTED], production line work and short-order cook.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since he worked as a janitor for [REDACTED] in October 2003.

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

- (a) Three herniated discs'
- (b) Hernia;
- (c) Left leg pain;
- (d) Left sciatica pain;
- (e) Diabetes.

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

**OBJECTIVE MEDICAL EVIDENCE (SEPTEMBER 24, 2007):**

An MRI dated 11/2/2006 showed degenerative disc disease at the L4-5 and L5-S1. There was no evidence of central canal stenosis. There was a broad based asymmetric disc bulge to the left involving lateral half of the left side of the disc space at L5-S1 (page 19).

On 10/23/2006, claimant was noted to continue to smoke several packs per day and drinks alcohol about once a month. He also uses marijuana and was being wiened off methadone because of his continued marijuana use. He walked with an antalgic gait, favoring the left side, but walked without the assistance of a cane or walker (page 17).

On 12/22/2006, claimant had pain with palpitation of the musculature on the left with some radiation and aching down into the legs. He complained of pain with flexion and extension. Straight leg raise (SLR) was negative (page 24).

On 1/5/2007, claimant had pain with SLR on the left. He was unable to toe-and-heel walk. He had pain with bending forward to 40° and extension to 5°. Lateral bending was restricted as well. Deep tendon reflexes were +1 and equal. He was continuing to lose weight. He had lost approximately 55 pounds and was down to 398 pounds (page 25).

On 3/9/2007, claimant had lost 60 pounds. He was getting about 2 to 2 ½ months of good relief with treatments and then his pain returned (page 27).

**ANALYSIS:**

Claimant's MRI did not show significant disc herniation, but there was a broad based asymmetric disc bulge at L5-S1. He had degenerative changes in L4-5 and L5-1. He has pain, but does not get short term relief from nerve root injections. Claimant is losing weight so that he can have surgery. He was 398 pounds in 1/2007. There were no significant neurological abnormalities. He used a cane on some exams, but not on other exams. Claimant would be limited to light work.

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- (6) On January 11, 2008, SSA approved claimant for SSI/RSDI benefits.

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 Department of Human Services 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 and the work is 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).

Since the Social Security Administration has approved claimant for SSI/RSDI benefits, the Administrative Law Judge does not have to decide the disability issue presented in claimant's application.

Approval by SSA is a presumptive resulting in an automatic approval of claimant's application for MA-P.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for MA-P purposes effective November 2006.

Accordingly, the department's denial of claimant's MA-P application is, hereby, REVERSED. The department shall open an MA-P case for claimant, forthwith.

SO ORDERED.

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

Date Signed: August 17, 2009

Date Mailed: August 18, 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.

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:

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