

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: 2007-17559
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 6, 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 November 6, 2007. Claimant personally appeared and testified under oath.

The department was represented by Valeria Vall (FIM) and Irene Hamilton (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on December 17, 2007. Claimant waived the timeliness requirements so that her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge made the final decision below.

ISSUES

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

(2) Did claimant establish a severe mental impairment expected to preclude him from substantial gainful work on a sustained basis 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 an MA-P applicant (March 26, 2007) who was denied by SHRT in October 2, 2007, due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age—28; education—high school diploma; post high school education—none; work experience—employed as an assembly line worker for an auto parts factory and as a midnight stocker for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity since he worked on a production line for an auto parts factory in June 2006.

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

- (a) Can't see;
- (b) Mentally frustrated due to his lack of vision.

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

OBJECTIVE MEDICAL EVIDENCE (October 2, 2007):

Medical records indicate claimant has Graves's disease with Graves's ophthalmopathy affecting his eyes especially his left eye. His left eye now has very poor vision; however, his right eye is 20/20. Surgery (orbital decompression) is suggested for his left eye.

ANALYSIS:

Claimant does have Graves disease that has affected his eyes—primarily his left eye. However, his vision is still good in his right eye. He may have some difficulty with peripheral vision on the left side; however, it should not pose a significant limitation.

* * *

(6) Claimant performs the following activities of daily living (ADL's): dressing, bathing (needs help), dishwashing, light cleaning, mopping, and vacuuming.

(7) Claimant has a valid driver's license but does not drive due to his eye dysfunction. Claimant is computer literate.

(8) The following medical records are persuasive:

A July 30, 2007 ophthalmic report was reviewed (July 30, 2007).

Claimant is a 27-year-old African male who was first seen in our office on April 1, 2004 after he was seen in a community-wide health screening. At that time, his visual acuity was 20/20-1 on the right and 20/20-2 on the left without correction. Photographic documentation was done and revealed a left bulgy. He has been followed by either [REDACTED] or me since that time. He has also been seen at the [REDACTED]. He has had radiographic studies done that demonstrate the problem with his bulgy eye.

* * *

Because of the continuing decline in vision and the bulginess of his left eye, claimant needs to have an orbital decompression for thyroid disease. Because this is a most complicated surgery, two surgeons are needed.

* * *

We are trying to visually rehabilitate claimant so that he can return to employment. At this time, it is dangerous for him to drive or operate heavy equipment. He has declining vision in his left eye and at this time, he can only see light out of it.

* * *

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing customary work functions within a required time. The most recent medical report contains the following diagnosis: left eye dysfunction.

(10) Claimant's most prominent complaint is his inability to see out of his left eye.

(11) Claimant has recently applied for federal disability benefits on two occasions. He was denied on both applications.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that the medical evidence of record does not document a mental/physical impairment that significantly limits claimant's ability to perform basic work activities.

The department denied claimant's MA-P application based on its failure to establish the condition which meets the severity and duration requirements.

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).

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 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).

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" is defined by MA-P standards as 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 is 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, or engaging in a work type generally performed for pay. PRM, Glossary, Page 34.

The evidence of record shows that claimant is not currently performing SGA.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means that the severe impairment is expected to last for 12 continuous months or result in death.

SHRT found that claimant does not meet the severity and duration requirements.

The medical records provided by claimant's ophthalmologist show that claimant has very diminished sight in his left eye (due to his Graves disease) but still has good sight in his right eye.

This means that claimant is not totally precluded from Substantial Gainful Activity at this time.

Claimant does not meet the severity and duration requirements.

STEP #3

The issue at Step 3 is whether claimant meets the listing of impairments in the SSI regulations. Claimant does not allege that he meets any of the listings.

Therefore, claimant does not meet the Step 3 disability requirements.

STEP #4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant previously worked as a production line worker in an auto parts factory.

This work may be defined as follows:

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Claimant's diminished eye sight in his left eye precludes him from working at the required pace of his former job as an auto parts assembler. Claimant meets the requirements of Step 4.

STEP #5

The issue at Step 5 is whether claimant has the residual functional capacity to do other work. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy.

These items are defined in the [REDACTED]

[REDACTED] at 20 CFR 416.967.

The medical evidence of record establishes that claimant is able to perform sedentary work. Claimant's vocational profile shows a younger individual (age 28) with a high school education and a history of unskilled work as a auto parts assembler and as a midnight stocker for [REDACTED].

The medical evidence of record shows that claimant is able to perform work as a parking lot attendant, as a ticket taker at a theatre, and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P 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 disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby,
AFFIRMED.

SO ORDERED.

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

Date Signed: August 17, 2009

Date Mailed: August 17, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

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JWS/tg

cc:

