

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: 2008-18541  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 29, 2008  
Eaton 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 Charlotte on July 29, 2008. Claimant personally appeared and testified under oath.

The department was represented by [REDACTED]

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was submitted to the State Hearing Review Team on July 30, 2008. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the ALJ made the final decision below.

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/retro/SDA applicant (December 13, 2007) who was denied by SHRT (June 12, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA-P for September, October and November 2007.

(2) Claimant's vocational factors are: [REDACTED]  
[REDACTED]  
[REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when he was employed [REDACTED].

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

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];
- (e) [REDACTED];
- (f) [REDACTED];
- (g) [REDACTED];
- (h) [REDACTED].

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

**OBJECTIVE MEDICAL EVIDENCE (June 12, 2008)**

\* \* \*

Claimant has a history of [REDACTED]  
[REDACTED]). Claimant has  
[REDACTED]. The condition is [REDACTED].

[REDACTED]. He should [REDACTED].

ANALYSIS: The objective medical evidence presented does not establish a disability at the listing or equivalency level. The collective medical evidence shows that claimant is capable of performing a wide range of work.

\* \* \*

(6) Claimant performs the following Activities of Daily Living (ADLs): [REDACTED]

[REDACTED]

[REDACTED] g. Claimant is [REDACTED].

Claimant was [REDACTED]. Claimant does not [REDACTED]

[REDACTED]. He does not [REDACTED].

(7) Claimant does not [REDACTED]. [REDACTED]

[REDACTED]. Claimant is not [REDACTED].

(8) The following medical records are persuasive:

(a) A March 14, 2008 narrative psychological evaluation was reviewed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

\*\*\*

- (b) A January 10, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnosis: P [REDACTED]  
[REDACTED]

[REDACTED]

- (c) A January 10, 2008 Medical Needs Form (DHS-54A) was reviewed.

The physician did not indicate that claimant has a medical need for any assistance for personal care activities.

The physician did state that claimant [REDACTED]  
[REDACTED]

\* \* \*

- (d) A December 20, 2007 Medical Examination Report (DHS-49) was reviewed.

The physician reported the following diagnoses: [REDACTED]  
[REDACTED]

The physician provided the following work limitations:

(a) [REDACTED]  
[REDACTED]

[REDACTED]

- (e) A January 14, 2008 Medical Examination Report (DHS-49) was reviewed.

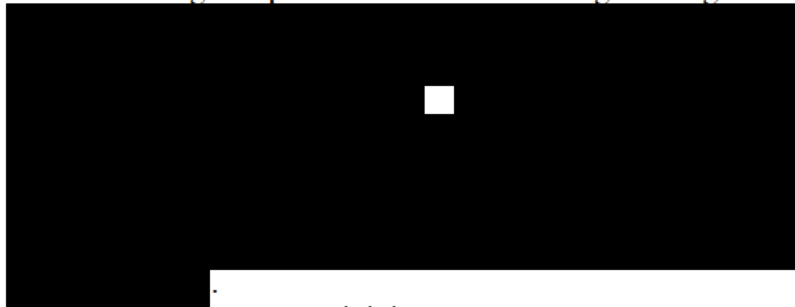
The physician provided the following current diagnoses:  
( [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] )  
[REDACTED].

[REDACTED]



- (f) A November 15, 2007 Neurology of Battle Creek progress note was reviewed.

The neurologist provided the following background:



\* \* \*

OBJECTIVE:



IMPRESSION:



- (g) A May 23, 2008 Henry Ford Hospital/neurology report was reviewed. The following background was provided:



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

\* \* \*

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. There are no Ph.D. psychologist reports in the record. Claimant did not submit a DHS-49D or DHS-49E to determine his mental residual functional capacity.

(10) The probative medical evidence does establish an acute physical/exertional condition expected to prevent claimant from performing some of his customary work functions



(driving). Claimant's epilepsy doctor at [REDACTED] states that claimant has a history of [REDACTED] and has failed [REDACTED] in the past and is also now on a toxic combination of [REDACTED] and continues to have [REDACTED]. It should be noted, however, that the family physician (DHS-49/January 14, 2008) reported that [REDACTED]. The family physician did not report any limitations on claimant's ability to stand, walk or sit. The physician reported that claimant is able to use his hands/arms normally, and the physician did not report any limitations on claimant's ability to use foot/leg controls.

The family physician did report the claimant is [REDACTED]. He also reported that claimant's [REDACTED].

(11) Claimant recently filed an application for federal disability benefits with the Social Security Administration. His application was recently denied. Claimant is expecting a Social Security Administrative Law Judge hearing in the near future.

## CONCLUSIONS OF LAW

### CLAIMANT'S POSITION

Claimant thinks he is [REDACTED].

### DEPARTMENT'S POSITION

The department thinks that claimant has the ability to perform normal work functions. The department thinks that the objective medical evidence does not establish a disability at the listing or equivalency level.

The department thinks that the medical evidence of record, does not establish a severe impairment which meets the duration requirements under PEM 260 and 261.

## 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).

In determining how a severe mental impairment affects claimant's ability to work, the following guidelines are used:

- (d) **Sufficient Evidence.** The evaluation of a 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 limitations 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, Appendix 1, 12.00(C).

- (e) **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, psychotic, and affective disorders you may have your life structured in such a way as to minimize your stress and reduce your signs and symptoms. 20 CFR 404, Subpart P, Appendix 1, 12.00(E).

Claimant has applied for MA-P/SDA benefits based on his epilepsy and his chronic seizure activity. Claimant has provided some objective medical evidence to establish that he has a combination of mental and physical problems which would significantly affect his ability to work.

Claimant has not established that he has a severe impairment which meets or equals a listed impairment in the SSI listings.

The evidence in the record regarding claimant's mental capacity is unpersuasive. There are no recent psychological evaluations by a Ph.D. psychologist. There are no neuropsychological evaluations in this file. The objective psychological evidence in the record does not establish that claimant is unable to perform activities of daily living, social functioning, concentration, persistence or pace. Claimant did report some memory limitations, but there is no clinical evidence to show the severity of his memory impairment or its estimated duration.

Therefore, the Administrative Law Judge concludes that claimant has not established that he is mentally incapable of doing basic work activities. Claimant does currently perform many activities of daily living and this shows that claimant is able to function in a work setting. The Administrative Law Judge did not observe that claimant had difficulty understanding or communicating with others.

Moving on to claimant's physical impairments, he reports that he is experiencing chronic seizures. According to claimant's testimony, his seizure began sometime in 2006. Obviously, because of claimant's seizures he is unable to do certain activities, such as driving an

automobile. He is also unable to operate dangerous machinery or to use tools which are sharp, such as knives, scissors, hoes, racks, shovels, etc.

The Administrative Law Judge will now consider claimant's residual functional capacity, or what he is able to do despite his limitations.

There is conflict in the medical evidence about exactly how much physical activity claimant is able to perform. For example, the physician who prepared the January 14, 2008 medical examination report states that claimant is able to lift 50 pounds frequently and 20 pounds occasionally. In addition, he does not report any restrictions on claimant's ability to stand/walk/sit. And he does not report any limitations on claimant's ability to use his feet/legs. Finally, he states that claimant is able to use his hands/arms for simple grasping, reaching, pushing-pulling and fine manipulating.

The physician does provide the following limitations: Claimant is unable to drive due to his seizure disorder and he has memory limitations. Based on this record, claimant would be able to do normal work activities that did not involve driving or working around dangerous machinery. However, claimant's epilepsy specialist at Henry Ford Hospital states that claimant is in a tenuous situation because the physician is unable to get the correct medications for claimant in order to reduce or minimize the number of seizures claimant experiences on a monthly basis.

Because of the controversy within the medical evidence, the Administrative Law Judge concludes that claimant has not established that he is totally unable to work. In addition, claimant is able to perform numerous activities of daily living, including dressing, bathing, cooking (sometimes), dish washing, mopping, vacuuming, laundry and grocery shopping. The medical record, taken as a whole, in combination with claimant's testimony at the hearing

establishes that claimant is able to perform sedentary work. Claimant is able to work as an attendant at a parking ramp, as a ticket taker at a movie theatre, or as a greeter at Walmart.

The department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis, as presented above.

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 PEM 260 and 261.

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

SO ORDERED.

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

Date Signed: February 9, 2009

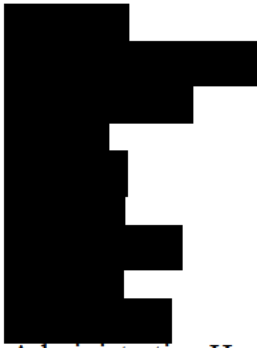
Date Mailed: February 10, 2009

**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.

JWS/cv

cc:



Administrative Hearings (2)