

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: 2009-20741
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 12, 2009
Gratiot 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 Ithaca on August 12, 2009. Claimant personally appeared and testified under oath.

The department was represented by Lee Hale (FIM).

ISSUE

Did the department establish medical improvement that enables claimant to perform substantial gainful work for MA-P/SDA purposes?

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 current MA-P/SDA recipient. He was first approved for benefits in 2007. The basis for his prior disability determination appears to be a major heart attack due to heart dysfunction. This hearing arises out of an eligibility review completed in February 2009.

(2) On May 14, 2009, SHRT issued a decision denying ongoing MA-P/SDA benefits because of medically documented improvement under 20 CFR 416.994. SHRT denied ongoing MA-P/SDA benefits using Med-Voc Rule 202.05 and 203.14. SHRT decided that claimant is able to perform light/medium unskilled work.

(3) Claimant's unable-to-work complaints are:

- (a) Status post heart attack (2000);
- (b) Fatigue;
- (c) Arthritis of the hands, wrists, feet, legs and shoulders;
- (d) Hypertension;
- (e) Poor hearing acuity;
- (f) Poor vision;
- (g) Chronic dizziness;
- (h) Panic attacks.

(4) Claimant's vocational factors are: age—59; education—high school diploma; post high school education—none; work experience—chore services provider for his mother, musician in his own band, housecleaner, and roofer.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 14, 2009)

This claim is a medical review of previously granted benefits (2/2008) due to impairments meeting or equaling a Listing, or per a Vocational Rule.

Claimant is a 58 year old male with 12 years of education and a history of unskilled work.

Claimant alleges heart disease and high blood pressure.

Claimant claim was denied by the Medical Review Team on 3/2009.

Denial was based on SSI Listing 4.01.

* * *

(6) The following medical records were reviewed.

- (a) A February 4, 2009 Medical Examination Report (DHS-49) was reviewed. Claimant's treating physician provided the following current diagnoses: Shortness of breath, right foot pain, COPD and hypercholesterolemia.

The treating physician also reported hearing dysfunction and labored breathing.

The treating physician provided the following work limitations:

Claimant is able to lift 10 pounds occasionally. He is able to stand/walk less than 2 hours in an 8 hour day. He is able to sit about 6 hours in an 8 hour day. Claimant is able to use his hands/arms for simple grasping, reaching, and fine manipulating; he is unable to do pushing-pulling. Claimant is able to operate foot controls.

The treating physician reported the following mental limitations: Some memory loss, limited ability for sustained concentration, limited ability to read, limited ability to engage in social interaction.

The treating physician did not report that claimant is able to return to work.

- (b) A February 4, 2009 Physical Examination Report by claimant's treating physician reported the following impairments: Hypertension, coronary heart disease, COPD, and hypercholesterolemia.

Claimants' treating physician did not report that he is able to work.

* * *

(7) The objective medical evidence shows that claimant has the following impairments: Shortness of Breath (SOB), right foot pain, COPD (Chronic Obstructive Pulmonary Disease), hypercholesterolemia, hearing dysfunction and labored breathing.

(8) The recent medical report from [REDACTED]) rebuts the medical evidence SHRT relied on to establish improvement. The treating physician's report

establishes that claimant's medical condition is approximately the same as when he was originally approved. There has been no significant clinical improvement in claimant's physical/mental condition, or in his ability to return to work.

CONCLUSIONS OF LAW

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.

THE ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY

Under current MA-P/SDA policy, **the department has the burden of proof** to establish that claimant's mental and physical impairments have improved to the point that claimant is now medically/vocationally able to return to work. PEM 260 and 261. The department relied on recent medical reports in the record to support its conclusion that claimant is now able to perform substantial gainful work.

However, at the hearing, claimant testified that his mental/physical condition remains the same or has slightly deteriorated.

In addition, the February 4, 2009 report submitted by claimant's treating physician showed that claimant's heart dysfunction, breathing dysfunction and hypercholesterolemia have not improved to the point that claimant is now able to perform substantial gainful activity.

Therefore, the department has not met its burden of proof to establish that claimant's combined impairments have improved to the point that he is now able to return to work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established the requisite medical improvement to support a denial of claimant's ongoing MA-P and SDA benefits under PEM 260 and 261.

According, the department's decision to close claimant's MA-P/SDA is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: April 16, 2010

Date Mailed: April 16, 2010

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 receipt date of the rehearing decision.

JWS/sd

cc:

