

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: 2009-18503
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 25, 2009
Iosco 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 on August 25, 2009, in East Tawas. Claimant appeared by telephone from her residence and testified under oath. Claimant was represented by [REDACTED]

[REDACTED].

The department was represented by Joan Green (ES).

ISSUES

- (1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?
- (2) Did claimant establish a severe physical impairment expected to preclude her 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 an MA-P/retro applicant (April 29, 2008) who was denied retro benefits for February 2, 2008 by SHRT (April 17, 2009) based on claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro benefits for February 2008. SHRT approved claimant for retro MA-P effective March 2008.

(2) Claimant's vocational factors are: age--44; education--11th; post high school education--GED; work experience--cashier for a gas station and motel manager.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2008 when she worked as a cashier for a gas station.

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

- (a) Diabetes mellitus;
- (b) COPD;
- (c) Degenerative disc disease;
- (d) Status post pneumonia;
- (e) Anxiety and depression;
- (f) Takes many psychotropic medications;
- (g) Unable to stand for long periods;
- (h) Unable to handle stress.

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

OBJECTIVE MEDICAL EVIDENCE (April 17, 2009)

The [REDACTED] approved this claimant for benefits in 4/09. At this point, it is not clear whether the claimant has been put into payment status or not, as her claim is being reviewed by [REDACTED]. However, it is anticipated that she will be placed into payment status.

Therefore, MA-P/Retro MA-P is approved effective 3/08. SDA is approved per PEM 261.

At the Medical Review (4/2010), please check to see if the claimant is in current payment status or not.

If the claimant is in current payment status at the medical review, no further action will be necessary.

* * *

(6) Claimant lives with her boyfriend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (needs help), dishwashing (sometimes), light cleaning (needs help), laundry (needs help) and grocery shopping (needs help). Claimant was hospitalized in 2009 for pneumonia, depression and stress. Claimant does not use a cane, walker, wheelchair, or shower stool. She does not wear braces. Claimant is currently under the care of a psychiatrist and sees her therapist on weekly basis.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] discharge summary was reviewed. The physician notes that the reason for admission was chest pain and difficulty breathing.

(b) The physician provided the following discharge diagnoses:

1. Chest pain, noncardiac;
2. Pneumonia secondary to alpha streptococcus;
3. Type II Diabetes mellitus--poor control;
4. Hyperlipidemia
5. Hypertension.
6. Degenerative disc disease.
7. Chronic obstructive pulmonary disease (COPD);
8. Chronic pain; illegible; cirrhosis; depression; and anxiety.

(c) A May 19, 2009 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following physical limitations: the claimant is able to lift less than ten pounds occasionally. She is able to stand/walk less than two hours

in an eight-hour day. She is able to sit less than six hours in an eight-hour day. She is able to use her hand/arms for simple grasping, reaching, and fine manipulating. She is not able to do pushing-pulling. She is unable to use her feet to operate foot/leg controls.

The physician noted the following mental limitations: limited comprehension; limited memory; limited concentration.

* * *

(9) On April 17, 2009, SHRT approved claimant for MA-P benefits effective April 2009. SHRT approved retro MA-P for March 2008, but did not approve MA-P for February 2008, which is the date the claimant was hospitalized.

CONCLUSIONS OF LAW

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 department's policy manual covering MA-P (PEM 260) provides for retro MA-P benefits once a disability onset date has been established.

The medical evidence of record establishes that in March 2008 claimant had the following physical impairments: diabetes, COPD, degenerative disc disease and status post pneumonia. She also had the following mental impairments: anxiety and depression.

On April 17, 2009, SHRT approved claimant for MA-P effective March 8, 2008. However, SHRT did not approve claimant for retro benefits for February 2008, which was the date she was hospitalized.

A careful review of the medical evidence in the record establishes that claimant's physical impairments have been ongoing since sometime in early 2008. Claimant was hospitalized in February 2008 to obtain treatment for chest pain, pneumonia, diabetes mellitus, hyperlipidemia, hypertension, degenerative disc disease and chronic obstructive pulmonary disease. In addition, claimant has long-standing depression and anxiety.

The medical evidence of record establishes that claimant's combination of impairments has existed since February 2008. The severity level of claimant's impairments in February and March are virtually the same.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the MA-P disability requirements for retro MA benefits for February 2008 retro benefits under PEM 260.

Accordingly, the department's denial of claimant's application for February 2008 retro MA-P is, hereby, REVERSED.

SO ORDERED.

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

Date Signed: March 26, 2010

Date Mailed: March 29, 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 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/tg

cc:

