

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: 2009-27211
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 23, 2009
Gladwin 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 September 23, 2009, in Gladwin. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Terry Ehle (ES).

Claimant requested additional time to submit new medical evidence. The new medical evidence was submitted to the State Hearing Review Team (SHRT) on December 1, 2009. The claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. **On December 8, 2009, SHRT approved claimant for MA-P.**

ISSUES

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

(2) 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 an MA-P/retro applicant (December 19, 2008) who was denied by SHRT (July 10, 2009) based on claimant's failure to establish an impairment which meets the severity and duration and requirements. The department denied claimant's MA-P under 20 CFR 416.913(d), due to insufficient evidence. Claimant requests retro MA for September, October, and November 2008.

(2) Claimant's vocational factors are: age—59; education—high school diploma; post high school education—GED; work experience—operated his own contracting company and provided carpentry, roofing and siding services, deputy sheriff for 17 years.

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

- (a) Heart dysfunction;
- (b) Shortness of breath (SOB);
- (c) Unable to walk for long distances.
- (d) Blockage in leg arteries;
- (e) Memory dysfunction;
- (f) Chest pain;
- (g) Status post pacemaker/defibrillator surgery;
- (h) Chronic fatigue;
- (i) Frequent bleeding due to incidental cuts;
- (j) Mental confusion;
- (k) Vision dysfunction;
- (l) Needs supplemental oxygen;
- (m) Diabetes.

- (4) SHRT evaluated claimant's clinical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (July 10, 2009)

Claimant has a history of defibrillator implant placement on 9/11/2008. An ultrasound of the neck was within normal limits. He reported on 6/2009 experiencing chest pains, fatigue, and palpitations. His physical examination was normal and he did not have any firing of the defibrillator since implantation.

ANALYSIS:

Claimant's current examination was done by a nurse. This is not an acceptable source. The evidence in the file is inadequate to assess all of claimant's alleged impairments. Additional medical evidence (and examination by a cardiologist) is recommended.

* * *

- (5) On December 8, 2009, SHRT approved claimant for MA-P.

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).

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," as defined by MA-P standards is a legal term which is individually determined by consideration of all factors in each particular case.

Since SHRT has decided that claimant is disabled for MA-P purposes, the Administrative Law Judge does not need to rule on the issue of disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does meet the MA-P disability requirements under PEM 260. Based on the December 8, 2009 SHRT approval, claimant is totally unable to perform any substantial gainful activity at this time. Therefore, claimant meets the disability requirements for MA-P.

The department shall provide claimant with a current examination and review claimant's disability status in December 2010.

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

Date Signed: December 11, 2009

Date Mailed: December 11, 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/tg

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cc:

