

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: 2008-30577
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 18, 2009
Allegan County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 March 18, 2009.

The D & O was delayed at the claimant's request for a second SHRT review of additional medical reports presented at the hearing (Claimant Exhibit A and B).

Claimant's requested continuance of the hearing to obtain additional medical reports was denied based upon lack of good cause per PAM 600.

After SHRT's second non-disability determination, the ALJ made the final decision below.

ISSUES

- (1) Was disability medically established (Medicaid)?
- (2) Was a recovered non-disability medically established (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) On December 5, 2007, the claimant applied for Medicaid retroactive to November 2007 and was denied on August 12, 2008; also, SDA had been approved on May 16, 2008, with a proposed termination per PEM 260/261.

(2) Claimant's vocational factors are: age 45, 10th grade education, and past unskilled work as a short order cook and factory assembly line worker.

(3) Claimant's medical diagnoses are: on January 31, 2007, had decompressive laminectomy at L3-L5; surgery on November 19, 2007, consisting of a redo of left L4-5 diskectomy and bilateral L5-S1 foraminotomies.

(4) Claimant's disabling symptoms/complaints are: able to perform basic mental work activities; unable to perform basic physical work activities as defined below because of low back pain from lifting/carrying more than 8 pounds; pain/numbness in left leg after sitting 20 minutes; pain in low back/left leg after walking 5 minutes; low back pain after 5 minutes of pulling activity; and required to use a cane for ambulation, prescribed by a doctor beginning November 2007 to the present.

[Physical Impairment Only]

(5) Medical exam on January 18, 2007 states that the claimant's deep tendon reflexes in the arms/legs are all normal; and that coordination/gait is normal (Medical Packet, page 31).

(6) Medical exam on March 15, 2007 states the claimant's strength and reflexes are normal; that his incision is well healed; that he will be allowed to gradually increase his activity

level; that he should not return to his job at this time; and that he could probably get back to work in six weeks.

(7) Medical exam on May 3, 2007 states that there has been good improvement in pre-op lumbar pain, leg numbness and leg weakness; and that claimant's strength in both legs is normal (Medical Packet, page 24).

(8) Medical exam on January 3, 2008 states the claimant is temporarily disabled and expected to return to work on February 21, 2008; that he can never lift/carry over 20 pounds; and that he needs no assistive device for ambulation (Medical Packet, page 40).

(9) Medical exam on July 15, 2008 states the claimant out of an 8-hour workday can stand and/or walk less than 2 hours and sit less than 6 hours; that he can lift/carry frequently less than 10 pounds and occasionally 25 pounds; that a cane is needed for ambulation; and that he can use his upper extremities on a repetitive basis, except for pushing/pulling activities (Medical Packet, page 6).

(10) SHRT report dated September 19, 2008 states the claimant's impairment(s) does not meet/equal Social Security Listing 1.04 (Medical Packet, page 70).

CONCLUSIONS OF LAW

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).

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).

Facts above are undisputed.

"Disability" is:

...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.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Note: If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean 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).

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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. If we can find that you are disabled or not disabled at any point in the review, we do not review further. 20 CFR 416.920(a). 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).

MEDICAID

Claimant has the burden of proof to establish by a preponderance of the medical evidence in the record that his physical impairment meet the department's definition of disability for Medicaid purposes. PEM 260.

STEP 1

Because the claimant was not performing substantial gainful work on the date of his Medicaid application, he meets the Step 1 eligibility test. 20 CFR 416.920(b).

STEP 2

This step determines whether the claimant, on date of application, had a severe physical impairment as defined above, which had lasted or was expected to last for a continuous period of at least 12 months. 20 CFR 416.916(a)(b). A *de minimus* standard is applied in determining severity----any ambiguities are determined in the claimant's favor.

The objective medical evidence stated above does not support the claimant's severe/duration requirement, as defined above.

[Physical Impairment Only]

The claimant testified that he cannot lift/carry over 8 pounds; and that he has used a cane for walking purposes since November 7 to the present, prescribed by a physician. But, the

above-mentioned medicals state the claimant can lift/carry frequently 10 pounds and occasionally 25 pounds. The medicals in January 2008 state the claimant needs no assistive device for ambulation and that his coordination/gait are normal. This and the rest of the above-mentioned medicals do not establish a severe physical impairment, as defined above, nor support the claimant's disabling symptoms/complaints stated above.

Before you can be determined disabled, the severity/duration requirement must be established by the objective medical evidence. 20 CFR 416.920(a). Therefore, Step 2 has not been established.

STEP 3

This step determines whether the claimant, on date of application, meets/equals a Social Security listing, and the duration requirement.

SHRT determined the claimant's non-disability under the listing mentioned above. No listings were cited by the claimant specifically addressing and approving any listing(s) in his submitted medical reports. Therefore, Step 3 has not been established.

STEP 4

This step determines whether the claimant, on date of application, was without a residual functional capacity for any of his past work during the last 15 years, despite the severe impairment. 20 CFR 416.920(e).

The medical evidence stated above does not establish the claimant's inability to perform any of his past work, as stated above. Therefore, Step 4 has not been established.

STEP 5

This step determines whether the claimant, on date of application, was without a residual functional capacity for any other work despite a severe impairment. 20 CFR 416.920(f).

The medical evidence stated above does not establish the claimant's inability to perform sedentary type work, as defined above.

Applicants with a residual functional capacity limited to sedentary type work as a result of a severe medically determinable physical impairment(s), and the claimant's vocational factors stated above are not disabled under this step. Medical-Vocational Rule 201.18.

SDA

The DHS has the burden of proof to establish by a preponderance of the medical evidence that the claimant has recovered a non-disability.

As mentioned above, the burden of proof changes in a termination case. The objective medical evidence does not establish disability under the MA-P case. Therefore, the recovered non-disability under the SDA case has not been established.

Therefore, this Administrative Law Judge is not persuaded that disability/non-disability has been established by a preponderance of the medical evidence.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that disability/non-disability (Medicaid/SDA) was not medically established.

Accordingly, Medicaid denial is UPHELD and SDA termination is REVERSED.

/s/ _____
William A. Sundquist
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 23, 2009

Date Mailed: June 24, 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.

WAS/cv

cc:

