

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: 2008-32140
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 5, 2009
Tuscola 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 February 5, 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 Exhibits A, B, C and D). After SHRT's second nondisability determination, the ALJ made the final decision below.

ISSUE

Was disability medically established?

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 August 1, 2008, the claimant applied for Medicaid retroactive to May 4/SDA and was denied on September 2, 2008 per PEM 260/261.

(2) Claimant's vocational factors are: age 50, 12th grade education, and past semi-skilled work as a manager of a bar/grill doing all administrative functions; skilled self-employed small diner owner; skilled pizza worker.

(3) Claimant's disabling symptoms/complaints are: able to perform basic mental work activity as defined above with difficulty because of depression, anxiety, panic attacks, crying a lot, and worrying about everything; not able to perform basic physical work activities as defined below because of pain in left leg from performing repetitive, reaching, bending, and twisting activities; difficulty dressing left leg due to pain; pain in left leg and difficulty getting into bed; needs assistive devices for ambulation (cane) prescribed by a doctor; has to lay down intermittently to rest for two hours at a time; cannot lift over eight pounds; needs brace around waistline for support.

(4) Claimant has not performed substantial gainful work since [REDACTED] when she quit for medical reasons.

[Mental Impairments]

(5) Medical exam on [REDACTED] states the claimant has no mental limitations (Medical Packet, page 3).

(6) Medical exam on [REDACTED] states the claimant is in no acute distress (Medical Packet, page 8).

(7) Medical exam on [REDACTED] states the claimant has no mental limitations (Medical Packet, page 16).

(8) Medical exam on [REDACTED] states the claimant's mood and affect are normal; that she is oriented x3; that attention span was normal; and that she has good memory (Claimant Exhibit A, page 32).

(9) Medical exam on [REDACTED] states the claimant is alert and oriented (Claimant Exhibit A, page 2).

[Physical Impairment]

(10) Medical exam on [REDACTED] states the claimant has lumbar spinal stenosis and needs to undergo surgery; that she can lift/carry occasionally 20 pounds; that she needs no assistive device, and that she is not to do any work until approximately eight weeks after surgery (Medical Packet, page 4).

(11) Medical exam on [REDACTED] states the claimant's lumbar region shows minimum tenderness; that range of motion at the lumbar spine is decreased; that straight leg raising is positive on the left and negative on the right; that motor strength testing demonstrates no evidence of weakness; that motor tone is normal throughout; and that gait is normal (Medical Packet, page 8).

(12) Medical exam on [REDACTED] states the claimant is limited to frequent lifting of ten pounds and occasionally 20 pounds, no bending or twisting, nor prolonged standing or sitting (Medical Packet, page 14).

(13) Medical exam on [REDACTED] states the claimant is limited to no bending, twisting, or prolonged standing; that out of an eight-hour workday, she can stand and/or walk less than two hours; that she can lift/carry frequently 10 pounds and occasionally 20 pounds; that she needs no assistive device for ambulation; and that she can use her upper extremities on a repetitive basis, except reaching and pushing/pulling activities (Medical Packet, page 16).

(14) Medical exam on [REDACTED] states the claimant's gait is markedly antalgic; that straight leg raise on left side was certainly positive; and that tone and coordination were maintained (Claimant Exhibit A, page 32).

(15) Medical exam on [REDACTED] states the claimant's arms show normal strength, sensation, and deep tendon reflexes; that she is a little bit tender to palpitation over the lower lumbar spine; that she has some problems heel and toe walking; that she has restricted straight leg raise bilaterally to about 30 degrees secondary to back pain (Claimant Exhibit A, page 3).

(16) SHRT report dated [REDACTED] states the claimant's impairment(s) does not meet/equal Social Security Listings 1.02 and 1.04 (Medical Packet, page 75).

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).

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. 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).

Claimant has the burden of proof to establish by a preponderance of the medical evidence in the record that her mental/physical impairment meets the department's definition of disability for Medicaid/SDA purposes. PEM 260/261.

Step #1

Because the claimant was not performing substantial gainful work on date of her Medicaid/SDA application, she meets the Step 1 eligibility test. Per 20 CFR 416.920(b).

Step #2

This step determines whether the claimant, on date of application, had a severe mental/physical impairment as defined above, which had lasted or was expected to last for a continuous period of at least 12 months (90 days for SDA). 20 CFR 416.16(a)(b). A *de minimus* standard is applied in determining severity—any ambiguities are determined in the claimant's favor.

The medical evidence stated above does not support a severe mental impairment or the claimant's disabling symptoms/complaints, but does support severe physical impairment, as defined above.

Medicals mentioned above in June, July, August and September 2008 state the claimant has no mental limitations; that he is alert and oriented x3; and that his attention span was normal with good memory.

Physical Impairment

The above-mentioned medicals on [REDACTED] conclude the claimant cannot work indefinitely. There is no objective medical evidence in support of this conclusion. The conclusion is inconsistent with the rest of the medicals; that medicals on [REDACTED] state the claimant has the residual functional capacity for lifting/carrying occasionally 20 pounds; that on

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June 30, 2008 motor strength testing demonstrated no evidence of weakness; that on [REDACTED], the claimant was limited to frequently lifting ten pounds and occasionally 20 pounds and no prolonged standing/sitting.

Claimant testified that her physician prescribed the use of a cane for her ambulation. Medicals mentioned above on [REDACTED] and [REDACTED] are to the contrary. They state the claimant needs no assistive device for ambulation.

The claimant's past work, as stated above, has included semi-skilled/skilled sedentary, administrative type work. The above-mentioned medicals show the claimant's residual functional capacity for past work. Therefore, claimant has not established Step 2 eligibility.

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 per 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. To the contrary, the medical evidence stated above shows the claimant's residual functional capacity for sedentary work as also demonstrated by her past sedentary administrative-type work.

Persons with a residual functional capacity limited to sedentary 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 201.15.

Therefore, this ALJ is not persuaded that 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 was not medically established.

Accordingly, Medicaid/SDA denial is UPHELD.

/s/

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

Date Signed: April 1, 2009

Date Mailed: April 1, 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.

WAS/tg

cc:

