

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: 2008-32167
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 13, 2009
Saginaw 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, a telephone hearing was held on January 13, 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). 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 April 10, 2008, the claimant applied for SDA and was denied on August 6, 2008 per PEM 261.

(2) Claimant's vocational factors are: age 25, 9th grade education, and past unskilled work as a pizza maker, washing dishes in a restaurant, janitorial work, hotel housekeeper, and [REDACTED] fast-food.

(3) Claimant's disabling symptoms or complaints are: able to understand, remember and carry out simple job instructions from time to time; pain in lower back and shoulders, requiring sitting to relieve the pain.

(4) Claimant has not performed substantial gainful work since three years ago.

MENTAL IMPAIRMENT

(5) Medical exam on [REDACTED] [REDACTED] states the claimant's GAF of 44 (Medical Packet, page 11).

[PHYSICAL IMPAIRMENT]

(6) Medical exam on [REDACTED] states the claimant says he has severe pain in the left lower area (lumbosacral joint), but on examination no muscle spasm could be detected; that he could stand, bend, stoop, carry, push, pull, close buttons, tie shoes, dress-undress, dial telephone, open door, make a fist, pick up coin/pencil, write, squat and arise from squatting, get on and off examining table, climb stairs; that reflexes of extremities were normal; that range of motion of the dorsal lumbar spine, shoulders, elbows, were normal; and that gait was stable and within normal limits (see Medical Packet, pages 19 to 21).

(7) Medical exam on [REDACTED] states the claimant had a normal cervical and lumbar examination, and unremarkable thoracic spine examination (Claimant Exhibit A, page 11).

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).

Facts above are undisputed.

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).

Claimant has the burden of proof to establish by a preponderance of the medical evidence in the record that his mental/physical impairment(s) meet the department's definition of disability for SDA purposes. PEM 261.

Claimant's claim that his disabling symptoms/complaints, on date of application, significantly limited him from performing basic work activities as defined above, **alone**, cannot establish a severe impairment, as defined above. It must be established by the objective medical evidence in the record. It was not.

The medical evidence stated above does support a severe mental impairment, but not a severe physical impairment nor the claimant's disabling symptoms or complaints. To the contrary, the physical evidence shows a nonsevere physical impairment, as defined above.

Let's assume, on date of application, a severe physical impairment in combination with the mental impairment had been established. Then, the question is whether it had lasted or was expected to last for a continuous period of at least 90 days. The objective medical evidence in

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the record does not establish this duration requirement. Before you can be determined disabled, the severity/duration requirement must be established by the objective medical evidence. PEM 261.

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, SDA denial is UPHELD.

/s/

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

Date Signed: February 28, 2009

Date Mailed: March 2, 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.

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