

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: 2008-18506

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 19, 2008

Emmet 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 November 19, 2008.

The Decision and Order was delayed at the claimant's request for a second SHRT review of additional medical reports recommended by SHRT and received on December 26, 2008 (Claimant Exhibit A). After SHRT's second non-disability 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 January 28, 2008, the claimant applied for Medicaid/SDA and was denied on April 3, 2008 per PEM 260/261.

(2) Claimant's vocational factors are: [REDACTED] unskilled work in lawn maintenance, snow removal, factory work, and odd jobs.

(3) Claimant's disabling symptoms/complaints are: able to perform basic mental work activities as defined below with difficulty in remembering, second guessing herself when she is correct, and cannot read; able to perform basic physical work activities as defined below with difficulty because of chronic pain/weakness in knees, intermittent pain in neck radiating throughout body, pain in eyes when neck goes out of place, and chronic pain in stomach.

(4) Claimant has not performed substantial gainful work since 2001 when she was fired from her job.

[Mental Impairment]

(5) Medical exam on February 1, 2008 states the claimant is limited in comprehension, memory, sustained concentration, reading/writing and social interaction (Medical Packet, page 13).

(6) Medical exam on March 21, 2008 states the [REDACTED] on a diagnosis of major depression, single episode, mild to moderate severity (Medical Packet, page 37).

(7) Medical exam on December 12, 2008 states the claimant is an educated female; that she claims not to know the town she lived in or her date of birth; that she forgets to take her medication; that her test results are **not** valid as she appears to put forth questionable effort; and that her poor effort may reflect malingering for secondary gain (Claimant Exhibit A, page 1).

[Physical Impairment]

(8) Medical exam on February 1, 2008 states the claimant's condition is stable with no physical limitations (Medical Packet, page 13).

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(s) meet the department's definition of disability for Medicaid/SDA purposes. PEM 260/261.

Step One

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). Therefore, the analysis continues to the next step.

Step Two

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 416.916(a) and (b). A *de minimus* standard is applied in determining severity-----any ambiguities are determined in the claimant's favor.

Claimant's claim that her disabling symptoms/complaints, on date of application, significantly limited her 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 not support a severe mental/physical impairment, nor the claimant's disabling symptoms/complaints. To the contrary, the medical evidence shows a non-severe impairment, as defined above.

Mental Impairment

Medicals mentioned above in February 2008 state the claimant is limited in comprehension, memory, sustained concentration, reading/writing and social interaction. These are conclusions unsupported by the objective medical evidence as to the severity in order to determine whether or not the claimant meets the severity test, as defined above. Therefore, no evidentiary weight is given to these conclusions per PEM 260.

The GAF of 52 mentioned above in March 2008 is considered a person with a non-severe mental impairment. *Diagnostic and Statistical Manual of Mental Disorders* (4th Edition-Revised). And the medical information mentioned above in December 2008 is not considered valid by the examiner. Therefore, no weight is given to this report.

Physical Impairment

Medicals mentioned above in February 2008 state the claimant has no physical limitations.

Let's assume, on date of application, a severe impairment had been medically established. Then, the remaining question is whether it had lasted or was expected to last for a continuous period of at least 12 months (90 days for SDA). The objective medical evidence of 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. 20 CFR 416.920(a). Therefore, Step 2 has not been established. However, the analysis will continue to the next step.

Step Three

This step determines whether the claimant, on date of application, meets/equals a Social Security listing, and the duration requirement. The medical evidence stated above does not establish a Social Security listing, and the duration requirement. Therefore, Step 3 has not been established. However, the analysis will continue to the next step.

Step Four

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

The medical evidence stated above does not establish the claimant's inability to perform any of her past work, as stated above. Therefore, Step 4 has not been established. However, the analysis will continue to the next step.

Step Five

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.

Persons with a residual functional capacity limited to sedentary work as the 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 201.27.

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: January 6, 2009

Date Mailed: January 6, 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 receipt date of the rehearing decision.

WAS/kgw

