

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: 2008-24475
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 25, 2009
Marquette 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 25, 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 17, 2008, the claimant applied for Medicaid retroactive to January 2008 and was denied on June 2, 2008 per PEM 260.

(2) Claimant's vocational factors are: age 47, high school education, and no past work during the last 15 years.

(3) Claimant's disabling symptoms/complaints are: short-term memory, severe stress, panic attacks, and major depression; develops pain in low back after sitting, electrical sensation radiating up arms into neck when reaching overhead, chronic headaches; feels like a wooden board in her spine keeping it straight when walking one block, muscle spasm in low back when bending less than halfway to knees, chronic numbness in hands, and limited rotation of neck.

(4) Claimant has not performed substantial gainful work during last 15 years.

[Physical Impairments]

(5) Medical exam on [REDACTED] states the claimant can sit, stand, and walk in a normal fashion (Claimant Exhibit A, page 2).

(6) SHRT report dated July 15, 2008 states that claimant's impairment(s) does not meet/equal a Social Security Listings 1.04 and 12.04 (Medical Packet, page 98).

CONCLUSIONS OF LAW

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.

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 evidence in the record that her mental/physical impairment(s) meets the department's definition of disability for Medicaid purposes. PEM 260.

Step #1

Because the claimant was not performing substantial gainful work on date of her Medicaid application, she 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 mental/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) and (b). A *de minimus* standard is applied in determining this step—any ambiguities are determined in the claimant’s favor.

The objective medical evidence of record does not support the claimant’s severe mental/physical impairment and the duration requirement, as defined above.

Mental Impairment

The objective medical evidence of record does not address any mental limitations by an M.D. or D.O. or fully licensed psychologist required per PEM 260.

Physical Impairment

The claimant testified that she cannot work, among other reasons, because she cannot sit, stand or walk due to pain in low back. But, the above-mentioned medicals state the claimant has a normal ability to sit, stand and walk. Otherwise, the objective medical evidence does not address the claimant’s physical limitations. 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 that claimant’s nondisability under the above-mentioned listings. No listings were cited by the claimant specifically address and approving a listing in her 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 her past work during the last 15 years, despite a severe impairment. 20 CFR 416.920(e). The claimant has not worked during the last 15 years. Therefore, Step 4 has not been established because of nonestablishment of Step 2.

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. Therefore, Step 5 has not been established.

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 denial is UPHELD.

/s/

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

Date Signed: May 26, 2009

Date Mailed: May 26, 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:

