

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: 2008-25448
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 26, 2009
Delta 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 26, 2009.

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 May 15, 2008, the claimant applied for Medicaid retroactive to February 1, 2008 and was denied on June 23, 2008 per PEM 260.

(2) Claimant's vocational factors are: age 44, 9th grade education, and past unskilled work as a night stocker for a food store; the claimant was absent to identify any other past work during the last 15 years.

(3) Claimant's medical diagnoses are: head injury on [REDACTED].

(4) Claimant's disabling symptoms/complaints are: absent from hearing.

(5) Claimant has not performed substantial gainful work since July 2008 when he was fired because he could not do the job as a stocker for a food store.

[Mental Impairment]

(6) Medical exam on [REDACTED] states the claimant's included secondary diagnoses of alcohol abuse and alcohol withdrawal (Medical Packet, page 75).

(7) Medical exam on [REDACTED] states the claimant's included final diagnoses of posttraumatic brain injury with moderately severe cognitive residuals; acute and chronic alcoholism related to the brain injury (Medical Packet, page 134).

[Physical Impairment]

(8) Occupational report on [REDACTED] states the claimant's balance appeared mild/moderately affected; that he is able to do complete heel to toe walking, heel walking and toe walking x10 feet and can balance on each foot for 10 seconds; that he is able to achieve tall knee fell position without the use of nearby surface for support to low, and with the support to raise himself from the floor; that he is able to crawl on hands and knees x6 feet forward and backward; that he is able to complete a full squat with the use of nearby surface for support; that he has a standing tolerance without limits; that he has a sitting tolerance without limits; that he has a walking tolerance without limits; that he is able to ascent and descend four-five stairs with the use of a handrail; that he can occasionally lift 20 pounds from the desk to the floor, 35 pounds from the desk to shoulder, 45 pounds from the desk to chair, and carry 25 pounds with either hand (Medical Packet, page 150).

(9) SHRT report dated August 1, 2008 states the claimant's condition is expected to improve within 12 months from date of onset or date of surgery and Medicaid was denied due to lack of duration (Medical Packet, page 156).

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 medical evidence in the record that his 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 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 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 416.960(a)(b). A *de minimus* standard is applied in determining this step—any ambiguities are determined in the claimant's favor. The objective medical evidence stated above supports the claimant's severe mental physical impairment, but not the durational requirement. Therefore, Step 2 has not been established.

Step #3

This step determines whether the claimant, on date of application, meets/equals a Social Security listed impairment, and the duration requirement. No listings were cited by the claimant specifically addressing and improving any listings 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 a 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 impairment(s), and the claimant's vocational factors stated above are not disabled under this step. Medical-Vocational Rule 201.24.

Let's assume that the claimant qualified as disabled after completing the five-step process.

Then, this ALJ would be required to address the claimant's chronic abuse of alcohol as shown in the above-mentioned medicals.

Alcoholics are not eligible for Medicaid if their alcohol is a contributing factor material to the finding of disability, unless it is determined that the claimant is disabled independent of the alcoholism. 20 CFR 416.935.

The claimant offered no medical proof that he meets the disability factors independently of his alcoholism.

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 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:

