

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: 2008-30068
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 12, 2009
Berrien 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 February 12, 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 June 3, 2008, the claimant applied for Medicaid/SDA and was denied on August 12, 2008 per PEM 260/261.
- (2) Claimant's vocational factors are: age 43, college education, and past skilled work as an LPN and semi-skilled work as a receptionist.
- (3) Claimant's medical diagnosis is: herniated disc at L4-5.

(4) Claimant's disabling symptoms/complaints are: unable to perform basic mental work activities as defined below because of chronic poor memory and concentration; unable to perform basic physical work activities as defined below because of pain in low back radiating down left leg below knee and right leg above knee; intermittent pain in back sometimes from breathing; occasionally has to lay down on the floor to rest and obtain relief; able to lift and carry a gallon of milk (eight pounds).

(5) Claimant has not performed substantial gainful work since July 17, 2007 when she was fired from her job.

[MENTAL IMPAIRMENT]

(6) Medical exam on [REDACTED] states the claimant has no mental limitations (Medical Packet, page 214).

(7) Medical exam on [REDACTED] states the claimant is not limited in comprehension, memory, sustained concentration, following simple instructions, reading/writing and social interaction (Medical Packet, page 17).

(8) Medical exam on [REDACTED] states the claimant is alert and oriented (Medical Packet, page 12).

[PHYSICAL IMPAIRMENT]

(9) Medical exam on [REDACTED] states the claimant's condition is stable; that she can stand and/or walk less than two hours; that she can lift/carry frequent less than 10 pounds and occasionally 20 pounds; that she needs no assistive device for ambulation; that she can use her upper extremities on a repetitive basis (Medical Packet, page 214).

(10) Medical exam on [REDACTED] states the claimant's gait exhibited a moderate left limp; that she does not use an assistive device for ambulation; that range of motion was decreased in the lumbar spine; that grip strength is normal; that hands have full dexterity; that she was unable to perform squatting; that straight leg raising test was positive on the left causing a burning sensation in the left hip; that range of motion of the dorsal lumbar spine was normal; that motor strength was decreased in the lower extremity at 4/5 (Medical Packet, page 38).

(11) Medical statement on [REDACTED] by [REDACTED] regarding the claimant's L5 disc herniation states she has significant functional impairment; that she is incapable of doing anything but the most sedentary work and even then can only sit for brief periods (Medical Packet, page 26).

(12) Medical exam on [REDACTED] by [REDACTED] states the claimant can lift/carry occasionally ten pounds (Medical Packet, page 18).

(13) Medical exam on [REDACTED] by [REDACTED] states the claimant out of an eight-hour workday can stand and/or walk at least two hours; that she cannot lift/carry any weight; that she needs no assistive device for ambulation; and that she can use her extremities on a repetitive basis (Medical Packet, page 17).

(14) Medical exam on [REDACTED] by [REDACTED] states the claimant can occasionally lift five pounds (Medical Packet, page 22).

(15) Medical exam on [REDACTED] states the claimant was able to heel-toe walk, bend forward about 10 to 15 degrees; that side bending and rotation were markedly limited due to pain; that she had pain in both paravertebral muscles in the lower aspect of the lumbar spine; that she had asymmetrical reflexes at the patella, markedly decreased on the left; that straight-leg

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raising was classically negative; and that she had no pain on range of motion of the hips (Medical Packet, page 12).

(16) SHRT report dated September 12, 2008 states the claimant's impairment(s) does not meet/equal Social Security listed impairment 1.04 (Medical Packet, page 222).

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).

The 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 264/261.

Step 1

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

Step 2

This step determines whether the claimant, on date of application, had a severe mental/physical impairment(s) 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/duration—any ambiguities are determined in the claimant’s favor.

The objective medical evidence stated above supports the claimant’s severe duration requirement for a physical impairment, but not for a severe mental impairment because the medicals state the claimant has no mental impairment.

Step 3

This step determines whether the claimant, on date of application, meets/equals a Social Security listed impairment, and the duration requirement.

SHRT determined the claimant’s nondisability under Listing 1.04. No listings were cited by the claimant specifically addressing 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 physical impairment. 20 CFR 416.920(e).

The medical evidence stated above does not establish the claimant's inability to perform any of her past work.

Physical Impairment

The claimant testified that she had the residual functional capacity to lift/carry a gallon of milk (eight pounds). Her doctor on [REDACTED] had inconsistent reports. In one of them, he stated claimant could not lift/carry any weight. In the other report, he stated the claimant could lift/carry occasionally ten pounds (Finding of Facts #12 and #13 above). The medical exam on [REDACTED] states the claimant could lift/carry frequently less than ten pounds and occasionally 20 pounds. Otherwise, the claimant testified that she cannot perform basic physical work activities, as defined above, because of pain in her low back radiating down both legs.

The above medical evidence does not support the claimant's disabling symptoms/complaints. To the contrary, the medical evidence shows that claimant's residual functional capacity for standing and/or walking at least two hours out of an eight-hour workday, and the use of her extremities on a repetitive basis. Her treating doctor opined that the claimant is incapable of doing anything but the most sedentary-type work.

Claimant has established that she has no residual functional capacity for her past work as an LPN because it would be more strenuous than sedentary work, as defined above. This ALJ does not find the medical evidence established the claimant's inability to do her past semi-skilled sedentary job as a receptionist. Therefore, Step 4 has 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 physical impairment. 20 CFR 416.920(f).

The medical evidence stated above does not establish the claimant's inability to perform sedentary type work as already discussed under Step 4 and as defined above.

Applicants with a residual functional capacity limited to sedentary type 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 201.28.

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: March 19, 2009

Date Mailed: March 20, 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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