

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: 2008-30320  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 8, 2009  
Muskegon 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 8, 2009.

The D&O was delayed at the claimant's request for a second SHRT review of additional medical reports presented at the hearing on January 12, 2009 (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 June 6, 2008, the claimant applied for Medicaid and was denied on July 9, 2008 per PEM 260.

(2) Claimant's vocational factors are: age—50, high school education, and past semi-skilled work as a factory machine operator, and semi-skilled restaurant worker.

(3) Claimant's disabling symptoms or complaints are: Difficulty doing fine manipulations in coordination with right hand; weakness from standing for five to ten minutes; chronic pain and inability to repetitively use right hand; and low energy and fatigue.

(4) Claimant has not performed substantial gainful work since [REDACTED] when she had a stroke.

### **PHYSICAL IMPAIRMENTS ONLY**

(5) Medical exam on [REDACTED] states the claimant has a full range of motion of the neck; that strength is normal and equal in the lower extremities bilaterally; that right upper extremity has decreased grip strength primarily grip strength in forearm muscles; that she does have good biceps and triceps strength bilaterally; that further physical examination is unremarkable (Medical Packet, pages 35 and 36).

(6) Medical exam on or about [REDACTED] states the claimant out of an eight-hour workday can stand and/or walk at least two hours and sit about six hours; that she needs no assistive device for ambulation; that she can use her left upper extremity on a repetitive basis (Medical Packet, page 39).

### **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).

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.

**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 physical impairment 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 for 20 CFR 416.920(b). Therefore, the analysis continues to the next step.

**STEP #2**

This step determines whether the claimant, on date of application, had a severe 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 severity—any ambiguities are determined in the claimant’s favor.

The medical evidence stated above does support a severe physical impairment in April 2008.

The remaining question is whether it had lasted or was expected to last for a continuous period of at least 12 months. 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.

Claimant Exhibit A are reports by a physical therapist who is not an M.D. or D.O. or fully licensed psychologist.

PEM 260, page 8, requires that evidence of disability must be based on the findings of an M.D. or D.O. or fully licensed psychologist. Therefore, Step 2 has not been established. However, the analysis will continue to the next step.

**STEP #3**

This Step determines whether the claimant, on date of application, meets or equals a Social Security Listing, and the durational 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 #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 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 for the required duration. Therefore, Step 4 has not been established. However, the analysis will continue to the next step.

**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 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, for the required duration.

Persons with a residual functional capacity limited to sedentary work as a result of a severe medically determinable physical impairment, and the claimant's vocational factors stated above are not disabled under this step. Medical-Vocational Rule 201.15.

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: February 22, 2009

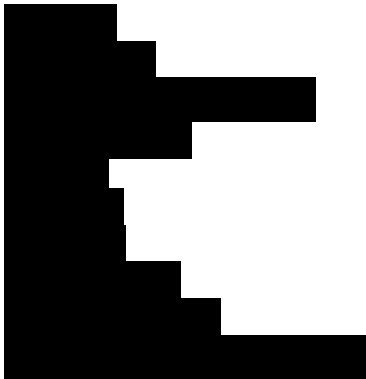
Date Mailed: February 23, 2009

**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:

A large black rectangular redaction box covering several lines of text in the distribution list.