

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: 2008-32159  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 28, 2009  
St. Clair 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 28, 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 following 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 30, 2008, the claimant applied for Medicaid retroactive to March to May and was denied on August 20, 2008 per PEM 260.

(2) Claimant's vocational factors are: age 43, high school education, and past skilled self-employed work as a [REDACTED] with 30 employees; skilled construction worker; and skilled branch sales manager.

(3) Claimant's disabling symptoms/complaints are: able to understand, remember and carry out simple job directions; cannot perform basic physical work activities as defined below because of lack of flexibility in feet, and chronic severe pain in feet, ankles, and heels; has the capacity for work as a phone operator.

(4) Claimant has not performed substantial gainful work since [REDACTED] after falling from a porch onto cement pavement on his heels causing bilateral heel fractures.

#### **MENTAL IMPAIRMENTS**

(5) Medical exams on [REDACTED] and [REDACTED] state the claimant is alert, oriented x3, and does not appear to be in any acute distress (Medical Packet, pages 32 and 34).

(6) Medical reports dated [REDACTED] and [REDACTED] state the claimant's stress severity rating as moderate (not severe) (Claimant Exhibit A, pages 8 and 15).

#### **PHYSICAL IMPAIRMENTS**

(7) Medical exam on [REDACTED] states the claimant fractured both heels by falling off a porch and landing on his heels on concrete (Medical Packet, page 22).

(8) Medical exam on [REDACTED] states the claimant's bilateral heel incisions were healed well; that he has a lot of swelling bilaterally; that he has limitation of foot and ankle motion; and that he is to remain non-weight-bearing (page 32).

(9) Medical exam on [REDACTED] states the claimant has been in cast (regarding his feet/ankle/heels) with no problems; that he has only mild pain which is localized in the ankle

joint; that he is to obtain crutches and use as needed; and that it is planned to place him in walking cast in another month (Medical Packet, pages 33 and 34).

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** unlike the rest to establish by a preponderance of the medical evidence on the record that his mental/physical impairment(s) meet the department's definition of disability for Medicaid purposes. PEM 260.

**STEP #1**

Because the claimant was not performing substantial work on date of his Medicaid application, he meets the Step 1 eligibility test per 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 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 severity—any ambiguities are determined in the claimant's favor.

Claimant claims that his disabling symptoms/complaints, on date of application, significantly limit him from performing basic work activities and established a severe impairment, as defined above.

The medical evidence stated above does support a severe physical impairment, but not a severe mental impairment.

Let's assume on date of application, a severe/mental physical impairment had been medically established in combination. Then, the remaining question is whether it has 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.

**STEP #3**

This step determines whether the claimant, on date of application, meets/equals a Social Security Listing, and the durational requirement. The medical evidence stated above does not establish a Social Security Listing, and the durational requirement. 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 per 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, for the required duration. 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 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 201.29.

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: March 16, 2009

Date Mailed: March 17, 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

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