

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: 2009-10294
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 23, 2009
Clare 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 April 23, 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).

Claimant's requested continuance of the hearing to obtain additional medical reports was denied based on lack of good cause per PAM 600. After SHRT's second nondisability determination, the ALJ made a final decision below.

ISSUE

Was physical 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:

The ALJ based upon the competent, material and substantial evidence on the whole record, finds the below material undisputed facts regarding the claimant:

(1) Negative action: Medicaid retroactive to February 2000/SDA application on May 19, 2008 was denied on September 4, 2008 per PEM 260/261.

(2) Vocational factors: age 49, high school education, and past unskilled work as a garbage recycling worker, semi-skilled bus driver and unskilled Bingo floor casino exchange worker.

(3) Disabling symptoms/complaints: Low back/right leg pain from sitting more than five minutes, low back/right leg pain after standing 20 minutes, low back pain/right leg pain after walking two blocks, low back pain/right leg pain after pushing/pulling activities, low back pain/right leg pain after lifting ten pounds, and needs a cane for ambulation prescribed by a doctor.

(4) Substantial gainful work: Quit last job in 2001.

(5) Medical reports of exams:

[Physical I Impairment]

- (a) [REDACTED] report states claimant has no abnormal gait (Claimant Exhibit A, page 7).
- (b) [REDACTED] report states the claimant out of an eight-hour workday can stand/walk less than two hours;
- (c) That he can lift/carry frequently less than ten pounds; that he needs no assistive device for ambulation is stated as needed; that he can use his upper extremities on a repetitive basis, except for fine manipulations (Claimant Exhibit A, page 2).
- (d) [REDACTED] SHRT report states the claimant had a right hip fracture on [REDACTED] (Medical Packet, page 47).

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).

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).

The claimant has the burden of proof to establish by a preponderance of the medical evidence that he has established Medicaid/SDA disability, as defined above. PEM 260/261.

A set order is followed to determine whether a person is disabled. It is five step evaluation procedures. If it is determined that a person is disabled or not disabled and any point in the review, there is no further review. 20 CFR 416.920(a).

Step #1: Current work activities.

Because the claimant was not working on date of application or currently, he is not disqualified from receipt of disability benefits under Step 1, and the sequential evaluation is required to continue to Step 2. 20 CFR 416.920(b).

Step #2: Impairment severity/duration.

If a person does not have any impairment(s) which significantly limits his physical ability to do basic work activities, as defined above, which has lasted or can be expected to last for a continuous period of 12 months (90 days for SDA), he is not disabled. Your age, education, and work experience are not considered. 20 CFR 416.920(a) and (b).

The above medicals do establish that the claimant was significantly limited in performing basic physical work activities, as defined above, on [REDACTED] due to a right hip fracture.

The remaining question is whether, on date of injury, the duration requirement was established. The medicals above do not establish this requirement nor support the claimant's disabling complaints for the required duration. Therefore, Step 2 is not established.

Therefore, this ALJ is not persuaded that disability has been established by the 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 medical disability was not medically established.

Medicaid/SDA denial is UPHELD.

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

Date Signed: May 18, 2009

Date Mailed: May 18, 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

2009-10294/was

cc:

