

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: 2009-11126
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 8, 2009
Alcona 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 8, 2009.

The D&O was delayed at the claimant's request for a second SHRT review of additional medical reports which were presented at the hearing (Claimant Exhibit A and B). 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, finds the below material/undisputed facts regarding the claimant:

(1) Medicaid application on June 24, 2008 was denied on September 30, 2008 per PEM 260.

(2) Vocational factors are: age 41, 9th grade education, and semi-skilled work as an adult caregiver for the mentally disabled, unskilled laundry aide in nursing home, cashier, and work cleaning commercial buildings.

(3) Disabling symptoms/complaints: fatigue from walking half a block, chronic pain throughout body, chronic pain in feet, chronic lack of energy, chronic nausea, shortness of breath, pain in back when sitting half an hour, pain after standing three to four minutes, weak hand grip, and could not lift any more weight.

(4) Substantial gainful work: not performed since July 2007 when she quit her job.

(5) Medical reports and exams:

[Physical Impairment Only]

- (a) On [REDACTED]; and [REDACTED]; state the claimant's strength was 5/5 in all muscle groups (Medical Packet, pages 167, 234, 309, and 312).
- (b) On [REDACTED], the condition was stable; that out of an eight-hour workday, she could stand and/or walk less than two hours; that she could sit less than six hours; that she could lift/carry less than ten pounds; that she had no assistive device for ambulation; and that she can use her extremities on a repetitive basis, except for pushing/pulling activity (Medical Packet, page 208).
- (c) SHRT physician report dated [REDACTED] states the claimant's impairment(s) did not meet/equal a Social Security listing (Medical Packet, page 352).

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).

Claimant has the burden of proof to establish by a preponderance of the medical evidence in the record that her physical impairment meets the department's definition of disability for Medicaid purposes. PEM 260.

Step #1: Current Work Activity

Step 1 has been established per 20 CFR 416.920(b).

Step #2: Impairment Severity/Duration

Step 2 determines the claimant, on date of application, had a severe physical impairment as defined above, which have lasted or was expected to last for a continuous period of at least 12 months. 20 CFR 416.916(a) and (b). The *de minimus* standard is applied when determining severity—any ambiguities are determined in the claimant's favor. The above medicals do not establish that the claimant is significantly limited in performing basic work activities, as defined above, nor support her disabling symptoms/complaints stated above. Therefore, a severe impairment has been established.

The remaining question is whether on date of application, the duration requirement was established. The medicals above do not establish a continuous period of at least 12 months. Therefore, Step 2 has not been established.

Step #3: Social Security Listing

Step 3 determines whether the claimant, on date of application, meets/equals a Social Security listed impairment(s), and the duration requirement. The claimant claims she is disabled under Social Security listings 14.00, 14.01, 14.02(a), 14.03, and 14.09. The claimant introduced no medical reports by a physician addressing the listings. SHRT physician considered the claimant under all the Social Security listings and determined her not disabled. Therefore, Step 3 was not established.

Step #4: Residual Capacity for Past Work

Step 4 determines whether claimant, on date of application, has a residual functional capacity for past work during the last 15 years, despite a severe impairment. 20 CFR 416.920(e). The medical evidence stated above does not establish claimant's inability to perform any of her past work, as stated above, nor does it support the claimant's disabling symptoms/complaints. Therefore, Step 4 has not been established.

Step #5: Residual Capacity for Any Other Work

Step 5 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 physical impairment(s), and the claimant's vocational factors stated above are not considered disabled. Medical-Vocational Rule 201.24. Step 5 has not been established.

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 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: June 4, 2009

Date Mailed: June 5, 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:

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