

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: 2009-11539
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 20, 2009
Kalamazoo 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 May 20, 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 decision, the final decision was made 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) Negative action: Medicaid application on August 28, 2008 was denied on October 22, 2008 per PEM 260.

(2) Vocational factors: age 45, 11th grade education, and past semi-skilled work as a general laborer, machine operator, and skilled labor technician.

(3) Substantial gainful activity: Not since March 2007 when claimant was fired from his job.

(4) Disabling symptoms/complaints: Unable to sometimes perform basic mental work activities as defined because of mental condition; pain in neck from reaching/lifting activities; and chronic low back pain.

(5) Medical exams:

[Mental Impairment]

- (a) Report of exam April 3, 2008 states the claimant's mental status is normal (Medical Packet, page 69).
- (b) Report of exam April 4, 2008 states the claimant's mental condition was normal (Medical Packet, page 22).
- (c) Report of exam dated April 9, 2008 states the claimant is alert and oriented x3 (Medical Packet, page 94).
- (d) Report of exam May 23, 2008 states the claimant is alert, oriented x3, and does not appear to be in any acute distress (Medical Packet, page 43).
- (e) Report of exam May 28, 2008 states the claimant is in no acute distress, that he is alert and oriented x3 (Medical Packet, page 99).
- (f) Report of exam November 10, 2008 states a current GAF of 50 (Medical Packet, page 10).
- (g) Report of exam dated April 17, 2009 states the claimant is limited in reading/writing and social interaction (Claimant Exhibit A, page 7).

[PHYSICAL IMPAIRMENT]

- (h) Report of exam March 12, 2009 states the claimant's straight leg raising feels positive on the right side at 30 degrees and left side at 40 degrees; that there is no weakness of the dorsiflexors around the plantar flexors of the right foot 44/5; that there is weakness of left biceps and triceps. Also 3-4/5 (Claimant Exhibit A, page 4).
- (i) Report of exam on April 27, 2009 states the claimant out of an eight-hour work day can stand and/or walk less than two hours; that he cannot lift/carry; that he needs no assistive device for ambulation; and that he cannot use his extremities on a repetitive basis (Claimant Exhibit A, page 7).
- (j) SHRT report dated February 9, 2009 states the claimant's impairment(s) does not meet/equal a Social Security listing (Medical Packet, page 115).

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).

"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.

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 burden of proof is on the claimant to establish disability by the preponderance of the medical evidence. PEM 260.

Step 1: Current Work Activity

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

The claimant was not working on date of application, nor currently. Therefore, the sequential evaluation continues to the next step.

Step 2: Impairment Severity/Duration

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

A *de minimus* standard is used in the determination of a severe impairment—any ambiguities are decided in the claimant's favor.

...You can only be found disabled if you are unable 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 (90 days for SDA). See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months (90 days for SDA). We call this the duration requirement. 20 CFR 416.909.

The above medicals do not establish a severe mental/physical impairment on date of application for the required duration, nor support the claimant's disabling symptoms/complaints stated above. Your impairment must be severe and meet the duration requirement before you can be determined disabled. 20 CFR 416.920(a). Therefore, this step 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 that mental/physical 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: June 23, 2009

Date Mailed: June 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:

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