

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: 2009-11824
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 2009
Bay 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 March 12, 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 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 October 1, 2008, the claimant applied for Medicaid retroactive to July 2008 and was denied on December 5, 2008 per PEM 260.

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(2) Claimant's vocational factors are: age 35, college education, and unskilled-semiskilled-skilled work as a salesperson, computer operator, library worker, and housekeeping employment.

(3) Claimant's medical diagnoses are: anxiety, bipolar disorder, and personality disorder.

(4) Claimant's disabling symptoms/complaints are: absent from hearing.

(5) Claimant has not performed substantial gainful work full-time since two years ago and currently doing part-time work, 20 hours a week, as an appliance salesperson for [REDACTED] for the last one and a half years.

[Mental Impairment Only]

(6) Medical exam on March 17, 2008 states the claimant's GAF is 55 (Medical Packet, page 24).

(7) Medical exam on May 15, 2008 states the claimant is alert and oriented x3 (Medical Packet, page 6).

(8) Medical exam on July 10, 2008, states the claimant is cooperative; her speech is clear and coherent; and that thoughts appear clear and organized (Medical Packet, page 8).

(9) Medical exam on September 25, 2008 (on admission to [REDACTED]) stated the claimant's GAF of around 40, and on September 29, 2008 (discharged from [REDACTED]) around 60 (Medical Packet, pages 73 and 74).

(10) SHRT report dated February 11, 2009 states the claimant's impairment(s) do not meet/equal a Social Security Listing (Medical Packet), page 91.

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

Step #1

Because the claimant was only working part-time on date of her application, this ALJ will give the claimant the benefit of the doubt that she meets the Step 1 eligibility test. 20 CFR 416.920(b).

Step #2

This step determines whether the claimant, on date of application, had a severe mental impairment as defined above, which had lasted or was expected to last for a continuous period of at least 12 months. 20 CFR 416.960(a) and (b). A *de minimus* standard as applied when determining severity—any ambiguities are determined in the claimant's favor.

The objective medical evidence stated above supports a severe mental impairment, as defined above.

A severe impairment had been medically established. Then, 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 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).

The claimant's GAF scores in March 2008 and September 2008 had been 55, 40 and 60, respectively. 40 is considered a person with a severe mental impairment and unable to work. 55 and 60 are considered a person with a nonsevere mental impairment with no difficulty in job functioning. [REDACTED]). Also, the

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other medicals show that her thought process is clear and organized; and that she is alert and oriented x3. This evidence does not establish a severe impairment continuously lasting for at least 12 months. 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 duration requirement.

SHRT physician determined the claimant not disabled under the above-mentioned listings. No listings were cited by the claimant's physician specifically addressing and approving any listings by her submitted medical reports. 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 her past work during the last 15 years, despite a severe impairment. 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. 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. 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 disabled under this step. Medical-Vocational Rule 201.27/201.28.

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.

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

Date Signed: May 26, 2009

Date Mailed: May 27, 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:

