

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: 2009-16739
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 15, 2009
Kent 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 July 15, 2009.

The below D&O was delayed for a second SHRT review of additional medical reports presented at the hearing (Claimant Exhibit A).

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: denial on February 2, 2009 of Medicaid application on November 3, 2008 based on nondisability per PEM 260; SHRT approved SDA based on cervical

surgery on October 28, 2008 with a medical review in July 2009 and she was denied Medicaid based on duration.

- (2) Vocational factors: age 38, 8th grade education, and past driving jobs and transferring auto parts.
- (3) Substantial gainful work: last worked nine years ago.
- (4) Disabling complaints: unable to perform basic mental work activities as defined below because of poor memory, depression/anxiety; unable to perform basic physical work activities as defined below because of suffering from headaches, back pain, and weakness in hands/legs; chronic tremors; diarrhea, constipation, and pain from reaching pushing activities, chronic numbness in hands, chronic pain throughout body, and medications put her in physical unbalance and sickness to stomach.
- (5) Reports of medical exams on:

[Mental Impairments]

- (a) December 1, 2008 states the claimant has no mental limitations (Medical Packet), page 11.
- (b) February 23, 2009 states the claimant is limited in sustained concentration and social interaction (Claimant Exhibit A, page 2).

[Physical Impairments]

- (c) December 1, 2008 states the claimant's condition is improving; that her limitation is not expected to last more than 90 days; that out of an eight-hour workday, she can stand/or walk less than two hours and sit about six hours; that she can lift/carry occasionally less than ten pounds; that she needs no assistive device for ambulation; that she can use her extremities on a repetitive basis, except for pushing forward/pulling activities (Medical Packet, page 12).

- (d) December 2, 2008 states the claimant's condition is stable; that her condition is expected to last more than 90 days; that she can lift/carry frequently ten pounds; that she needs no assistive device for ambulation; and that she can use her extremities on a repetitive basis (Medical Packet, page 19).
- (e) January 13, 2009 states the claimant since her surgery, her condition is stable; that follow-up x-ray shows satisfactory interval progress of her fusion; and that from standpoint of her surgery she may resume her normal activity level (Medical Packet, page 39).
- (f) February 23, 2009 states the claimant out of an eight-hour workday can stand/or walk less than two hours and can sit less than six hours; that she can lift/carry frequently less than ten pounds and occasionally ten pounds; that she needs no assistive device for ambulation; that she can use her left upper extremity on a repetitive basis, except for pushing/pulling activities due to strain on neck (Claimant Exhibit A, page 2).

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.

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).

On date of application, the claimant was not working, nor currently. Therefore, the sequential evaluation continues to Step 2.

Step 2: Impairment Severity/Duration

To qualify for MA-P, claimant must first satisfy both the gainful work and the duration criteria (20 CFR 416.920(a)) before further review under severity criteria. If claimant does not have any impairment or combination of impairments which significantly limits physical or mental ability to do basic work activities, an ultimately favorable disability determination cannot result. (20 CFR 416.920(c)).

...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 severe impairment-----any ambiguities are decided in the claimant's favor.

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. We call this the duration requirement. 20 CFR 416.909.

On date of Medicaid application, the abovementioned medical reports do not establish a severe mental impairment, as defined above for the required duration, nor support the claimant's disabling symptoms/complaints stated above. To the contrary, the medicals show the nonsevere mental impairment, as defined above.

The objective medical evidence establishes the claimant's severe back impairment on October 28, 2008, but not the duration requirement of one continuous year. To the contrary, the medical evidence above on December 1, 2008 states the claimant's impairment is expected to last not more than 90 days; that would be from October 28, 2008 to March 1, 2009 would be approximately four months or less than the required 12-month period.

Most of the medical reports introduced into the record were diagnostic/treatment reports, and did not address the claimant's mental/physical limitations in order to determine whether she was significantly limited in performing basic work activities for the required duration.

Because both severity and duration must be established at Step 2 before further review, an ultimate favorable disability determination cannot result. Step 2 has not been established.

Therefore, this ALJ is not persuaded that disability has been established by the preponderance of the medical evidence of record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that mental/physical disability has not been established.

Accordingly, Medicaid denial is UPHELD.

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

Date Signed: August 20, 2009

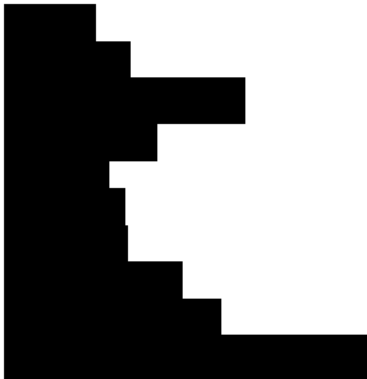
Date Mailed: August 24, 2009

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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