

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: 2009-17227  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 9, 2009  
Genesee 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 June 9, 2009.

The below D&O was delayed for a second SHRT review of additional medical reports presented at the hearing (Claimant Exhibit A) and recommended by SHRT and received on October 7, 2009. (Claimant Exhibit B.)

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 (retroactive to July 2008) on October 21, 2008 was denied on December 3, 2008 based on nondisability per PEM 260.

(2) Vocational factors: age 46, GED education, and past work as a semi-skilled residential and commercial painter, and unskilled construction worker.

(3) Disabling symptoms/complaints: limited to sitting 20 minutes because of pain in low back, standing 15 to 20 minutes because of pain in right leg, feet and/or ankles; able to perform pushing/pulling activities, limited in reaching activities because of pain in low back, right knee; limited to lifting/carrying ten pounds, and uses a cane not prescribed by a doctor.

(4) Reports of medical exams on:

**[Physical Impairment Only]**

- (a) July 17, 2008 states the claimant's condition is improving; that he can sit less than six hours out of an eight-hour workday; and that he needs no assistive device for ambulation (Claimant Exhibit A, page 13).
- (b) July 8, 2009 states the claimant has **some** difficulty walking on level ground, but able to walk five to ten blocks with a cane; that he agreed that he has no difficulty walking and walks with a cane for short distances; and that he is now using marijuana (Claimant Exhibit B, pages 1 and 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 a preponderance of the medical evidence of record. 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 must continue to Step 2.

**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 ambiguity is 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 application, the above medicals do not establish a severe physical impairment, as defined above, for the required duration, nor support the claimant's disabling symptoms/complaints stated above.

Most of the medicals in the record, in this case, were diagnostic/treatment reports and do not address the claimant's physical limitations in order to determine whether he is significantly limited in performing basic work activities, as defined above.

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

Assume Step 2 had been established, then, the remaining question would have been whether or not the claimant's drug and alcohol abuse was a contributing factor material to the finding of disability. The tests for materiality are whether you would still find the claimant disabled if he stopped using drugs or alcohol. 20 CFR 416.935-.941. In this case, the question did not have to be determined because the claimant did not otherwise establish Step 2 based on severity/duration.

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

Accordingly, Medicaid denial was UPHELD.

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

Date Signed: October 21, 2009

Date Mailed: October 21, 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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