

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: 2009-18338
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.

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 (retro to November 2008) on December 5, 2008 was denied on December 23, 2008, based on nondisability per PEM 261.
- (2) Vocational factors are: age 48, 9th grade education, and no past work the last 15 years.

(3) Disabling symptoms/complaints: any physical movements most of the time cause chronic burning sensation in low back, left hand (carpal tunnel syndrome) pain when gripping, intermittent right knee sharp pain, limited in walking 100 feet before discomfort in low back, sitting too many minutes causes left leg numbness, lifting/carrying limited to a gallon of milk for a distance of five to six feet, could lift/carry a gallon of milk frequently so long as on medications.

(4) Reports of medical exams on:

[Physical Impairment Only]

- (a) March 6, 2008 states the claimant's motor exam revealed normal tone, bulk and muscle strength through all muscle groups at 5/5; and that gait is normal (Medical Packet, page 104).
- (b) January 21, 2009 states the claimant's condition is stable; that his limitations are not expected to last more than 90 days; that out of an eight-hour workday, he can stand two hours, walk two hours and sit four hours; that he can lift/carry occasionally ten pounds; that he can use his extremities on a repetitive basis (Medical Packet, page 87).
- (c) January 28, 2009 states the claimant's condition is stable; that out of an eight-hour workday he can stand and/or walk about six hours and sit about six hours; that he can lift/carry occasionally ten pounds; and that he can use his extremities on a repetitive basis, except for pushing/pulling and fine manipulating activities (Medical Packet, page 86).

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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 objective medical evidence. PEM 260.

Step #1: Current Work Activities

...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

...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.

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.

The medicals above do not establish a severe physical impairment for the required duration, nor support the claimant's disabling symptoms/complaints stated above. Your impairment must be severe and meet the durational requirement before you can be determined disabled. 20 CFR 416.920(a).

Most of the medical reports in this case were diagnostic treatment reports and did not address the claimant's physical limitations in order to determine whether he was significantly limited in performing basic work activities as defined above.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that physical 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: July 7, 2009

Date Mailed: July 7, 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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