

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: 2009-19317
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 2, 2009
Marquette 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 2, 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) Medicaid/SDA application on January 9, 2009 was denied on March 2, 2009 based on nondisability per PEM 260/261.

(2) Vocational factors: age 43, high school education, and past unskilled work as a customer service representative, on-line phone sales, self-employed soda-pop vendor, [REDACTED] retail sales person; and semi-skilled as set-up of equipment in restaurants for "DJs."

(3) Substantial gainful work: Not since January 2008 when the claimant was fired from her job.

(4) Disabling symptoms/complaints: mentally cannot focus, concentrate, and has depression, anger, and personality disorder; physically cannot perform lifting/pushing activities because of pain radiating down from sacrum, cannot perform twisting/turning activities because of pain radiating down both legs and right hip. Has chronic stiffness from shoulder blade up to neck/forehead; chronic pressure in ears; and sleeplessness.

(5) The medical reports of exams state on:

[Mental Impairments]

(a) January 6, 2009 he is alert, oriented times three, and in no acute distress (Medical Packet, page 50).

[Physical Impairments]

(b) January 9, 2009 that he has adequate pincher grasps; dexterity was unimpaired; that he able to tie and lace shoes and pick up a dime; that he had no difficulty getting on and off the examination table, mild difficulty heel walking, mild difficulty balancing; that he had a normal range of motion of the cervical spine, dorsal lumbar, shoulders, elbows, hips, knees, ankles, wrists, hand-fingers; that motor strength and tone were normal; that he walked with a halting gait without the use of an assistive device; that with his cane, his gait was very stable, confident, and swift; that his gait was impossible to adequately assess, as was his need for use of a cane, due to lack of cooperation to perform motor activities involving lower extremities without use of his cane (Medical Packet, pages 2 to 5).

(c) May 4, 2009, SHRT report states the claimant's impairment does not meet/equal a Social Security Listing (Medical Packet, page 60).

CONCLUSIONS OF LAW

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).

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.

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 by a preponderance of the medical evidence of record. PEM 260/261.

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, or currently. Therefore, the sequential evaluation process is required to continue to Step 2.

Step 2: Impairment Severity/Duration

To qualify for MA-P, the 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 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.

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

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

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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that disability was not medically not established.

Accordingly, Medicaid/SDA denial is UPHELD.

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

Date Signed: September 3, 2009

Date Mailed: September 10, 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:

