

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: 2009-20935  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 8, 2009  
Ingham 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 8, 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 case action: denial on December 22, 2008 of Medicaid application on November 25, 2008 based on nondisability per PEM 260.
- (2) Vocational factors: Age 64, 4<sup>th</sup> grade education, and past unskilled work as a baker and dishwasher in a restaurant.

(3) Substantial gainful work: Currently employed part-time over minimum wage one day a week for one hour in a restaurant making bread and passing out breadsticks to customers at table; the economy reduced her hours from four hours a day, four to five days a week.

(4) Disabling symptoms/complaints: Has residual functional capacity for basic mental/physical work activities as defined below.

(5) Reports of exams on:

**[Mental Impairment]**

(a) August 6, 2008 states that claimant's thoughts appear to be organized; affect is appropriate; that she makes good eye contact and is interactive; that speech is clear; and that she is oriented to person, place and time (Medical Packet, page 14).

**[Physical Impairment]**

(b) August 6, 2008 states the claimant does not use a cane or a walker for ambulation; and that motor strength is 5/5 on both the upper and lower extremities bilaterally (Medical Packet, page 4).

**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 working part-time. This employment was not substantial gainful work. 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)).

Because disability must be determined on the basis of medical evidence, federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When claimant is found either disabled or not disabled at any point in the process, the claimant is not considered further.

*A de minimus* standard was 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 Medicaid application, the above-mentioned medical reports do not establish a severe impairment, as defined above, for the required duration, nor support the claimant's disabling symptoms/complaints stated above. To the contrary, the medicals show a nonsevere impairment as defined above.

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.

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.

#### 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.

Medicaid denial is UPHELD.

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

Date Signed: August 10, 2009


Date Mailed: August 11, 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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