

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: 2009-22763
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 16, 2009
Mecosta 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 16, 2009.

The below D&O was delayed for a second SHRT review of additional medical reports presented at the hearing (Claimant Exhibits A and 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: Denial on March 30, 2009, Medicaid retroactive to September 2008/SDA application on December 18, 2008 based on non-disability per PEM 260/261.

(2) Vocational factors: age 49, eighth grade education, and past unskilled work at [REDACTED] as cleaner and maintenance worker.

(3) Substantial gainful work: not since 2002/2003.

(4) Disabling complaints: Not able to perform basic mental work activities as described below because of crying and confusion and does not like being around people; unable to perform basic physical work activities as defined below because of chronic swelling of neck, chronic low back pain, chronic pain radiating down to knee, and intermittent swelling above knee.

(5) Reports of exams on:

[Mental Impairment]

- (a) August 27, 2008 report states the claimant has a limited memory (Medical Packet, page 330).
- (b) February 19, 2009 states the claimant's GAF of 70 (Medical Packet, page 642).
- (c) March 3, 2009 states the claimant is cooperative and answered questions and followed commands; that he is in no acute distress; that his immediate, recent and remote memory is intact and with normal concentration; and that insight and judgment are appropriate (Medical Packet, page 353).

[Physical Impairments]

- (d) August 27, 2008 states the claimant's condition is stable; that he needs no assistive device for ambulation (Medical Packet, page 330).
- (e) March 3, 2009 states the claimant's grip strength remains intact; that dexterity is unimpaired; that he could pick up a coin, button clothing, and open a door; that he had mild difficulty getting on and off the examination table, mild difficulty heel and toe walking, moderate difficulty performing a partial squat, and was unable to hobble; that his range of motion was normal for the cervical spine,

dorsolumbar spine, shoulders, elbow, hips, knees, ankles, wrists, hands-fingers (Medical Packet, page 352).

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.

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

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

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

[Mental Impairments]

To the contrary, the above GAF of 70 describes a person with a nonsevere mental impairment and able to function pretty well. Diagnostic and Statistical Evaluation of Mental Disorders (4th Edition, Revised).

[Physical Impairments]

Let's assume a severe physical impairment had been established. Then, the question is whether, on date of application, the impairment could be expected to last for a continuous duration of 12 months (90 days for SDA). The duration requirement is not established by the above medicals.

Most of the medicals, in this case, were diagnostic or treatment reports, more than a year old before the application, and do not address the claimant's 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.

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

Accordingly, Medicaid/SDA denial is UPHELD.

/s/

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

Date Signed: August 13, 2009

Date Mailed: August 14, 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

2009-22763/was

cc:

