

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: 2009-24052  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 21, 2009  
Montmorency 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, a telephone hearing was held on July 21, 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 August 3, 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 case action: Denial on April 3, 2009 of Medicaid/SDA application on January 21, 2009 based on nondisability per PEM 264/261.

(2) Vocational factors: age 47, 14 years of education, and past semi-skilled work as a cook and waiting table at a restaurant, and skilled work as a cosmetologist.

(3) Substantial gainful work: Not since one and a half years ago.

(4) Disabling symptoms/complaints: Able to perform basic mental work activities defined below limited to poor memory, confusion, and anxiety; unable to perform basic physical work activities as defined below because of pain throughout body after lifting/carrying less than 10 pounds, numbness from waist down, muscle spasm/cramping in legs, and arms; pain in neck radiating down back; migraine headaches; difficulty walking, cannot stand without a cane prescribed by a doctor; and able to lift and carry less than ten pounds.

(5) Reports of medical exams on:

**[Mental Impairment]**

- (a) April 4, 2008 states the claimant was alert and oriented to person, place and time; and judgment was intact (Medical Packet, pages 2 and 3).
- (b) May 12, 2008 states the claimant is limited in memory and sustained concentration (Medical Packet, page 6).
- (c) August 2, 2008 states the claimant is alert and is in mild distress (Medical Packet, page 23).
- (d) March 6, 2009 states the claimant's GAF of 60 (Medical Packet, page 114).

**[Physical Impairment]**

- (e) April 4, 2008 states the claimant's strength is 4/5 in the intrinsic hand muscles, 5/5 in the biceps, triceps and deltoid muscles, 3/5 in the quadriceps, 4/5 in the exterior extensor hallucis, longus, tibialis anterior, and gastrocnemius bilaterally; that gait was unsteady; and that she was able to perform tandem gait (Medical Packet, page 2).

- (f) May 12, 2008 states the claimant out of an eight-hour workday can stand and/or walk less than two hours and sit less than six hours; that she can lift/carry occasionally less than ten pounds; and that she uses a cane for ambulation (Medical Packet, page 6).
- (g) August 2, 2008 states the claimant's neck shows a slightly diminished range of motion and no pain with her range of motion; and that her right shoulder shows good range of motion and good grip in right arm (Medical Packet, page 23).
- (h) January 14, 2009 states the claimant's condition is stable; that out of an eight-hour workday, she can stand and/or walk less than two hours, and sit less than six hours; that she can lift/carry occasionally less than ten pounds; and that she needs a cane for ambulation (Medical Packet, page 122).

#### 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 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 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 ultimate 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 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 application, the above medicals do not establish a severe mental/physical impairment, as defined above, for the required duration of one continuous year (90 days for SDA), nor support the claimant's disabling symptoms/complaints stated above.

Most of the medicals, in this case, are diagnostic/treatment reports and do not address the claimant's limitations in order to determine whether she was 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 by 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: October 21, 2009

Date Mailed: October 22, 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.

2009-24052/was

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:

