

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: 2009-2590  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 5, 2009  
Tuscola 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 February 5, 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) On July 11, 2008, the claimant applied for Medicaid and was denied on September 2, 2008 per PEM 260.
- (2) Claimant's vocational factors are: age 38, lack a credit for high school graduation, and past skilled work as an automobile body repairman.

(3) Claimant's disabling symptoms/complaints are: unable to perform basic physical work activities as defined above because of his pain in low back after lifting five pounds, extreme low back pain from bending, tingling pain/numbness in legs after standing 15 to 20 minutes, and soreness in low back from sitting 20 to 30 minutes.

(4) Claimant has not performed substantial gainful work since November 2006 when he quit his job because of back problems and loss of use of his right leg.

**[Physical Impairment Only]**

(5) Medical exam on [REDACTED] states the claimant had a decompressive lumbar laminectomy and interbody fusion for back and leg pain (Medical Packet, page 17).

(6) Medical exam on [REDACTED] states the claimant can lift/carry not over ten pounds; that he is restricted from repetitive bending, twisting, stooping, and pushing/pulling activities (Medical Packet, page 9).

**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.

**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).

**Sedentary work.** Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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).

**Claimant has the burden of proof** to establish by a preponderance of the medical evidence in the record that his physical impairment(s) meets the department's definition of disability for Medicaid purposes. PEM 260.

#### **STEP #1**

Because the claimant was not performing substantial gainful work on his application for Medicaid, he meets the Step 1 eligibility test per 20 CFR 416.920(b).

#### **STEP #2**

This step determines whether the claimant, on date of application, had a severe physical impairment as defined above, which had lasted or was expected to last for a continuous period of at least 12 months. 20 CFR 416.916(a) and (b). *A de minimus* standard is applied in determining severity—any ambiguities are determined in the claimant's favor.

Claimant's claim that his disabling symptoms/complaints stated above, on date of application, significantly limited him from performing basic work activities as defined above,

**alone**, cannot establish a severe impairment. It must be established by the objective medical evidence in the record. It was not.

The medical evidence stated above does not support a severe physical impairment nor the claimant's disabling symptoms/complaints.

Let's assume, on date of application, a severe physical impairment had been medically established. Then, the remaining question of whether it had lasted or was expected to last for a continuous period of at least 12 months. The objective medical evidence on the record does not establish this duration requirement. Before you can be determined disabled, the severity/duration requirement must be established by the objective medical evidence. 20 CFR 416.920(a). Therefore, Step 2 has not been established.

### **STEP #3**

This step determines whether the claimant, on date of application, meets/equals a Social Security Listing, and the duration requirement. The medical evidence stated above does not establish a Social Security Listing, and the duration requirement.

SHRT determined the claimant not disabled under Social Security Listing 1.04, and the claimant does not claim disability based on a Social Security Listing. Therefore, Step 3 has not been established.

### **STEP #4**

This step determines whether the claimant, on date of application, was without a residual functional capacity for any of his past work during the last 15 years despite a severe impairment per 20 CFR 416.920(e).

The medical evidence stated above does establish the claimant's inability to perform his past work, as a skilled auto body repair worker. This work requires sustained standing and

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frequent use of body on a regular basis with the capacity to lift/carry frequently more than ten pounds. Therefore, Step 4 has been established.

**STEP #5**

This step determines whether the claimant, on date of application, was without a residual functional capacity for any other work despite a severe impairment per 20 CFR 416.920(f).

The medical evidence stated above does not establish the claimant's inability to perform sedentary type work, as defined above.

Persons with a residual functional capacity limited to sedentary work as a result of a severe medically determinable physical impairment(s) and the claimant's vocational factors stated above are not disabled under this step. Medical-Vocational Rule 201.27/201.28.

Therefore, this ALJ is not persuaded that disability has been established by a 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.

Accordingly, 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: March 9, 2009

Date Mailed: March 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:

