

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: 2009-268
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 9, 2009
Iosco 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 April 9, 2009.

The D&O was delayed at the claimant's request for a second SHRT review of additional medical reports presented at the hearing (Claimant Exhibits A & B). Claimant did not want to pursue SHRT's recommended additional medical testimony. After SHRT's second nondisability determination, the ALJ made the final decision below.

ISSUE

Was mental/physical 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 June 30, 2008 was denied on August 25, 2008 per PEM 260/261.

(2) Vocational factors: age—54, high school education, and past unskilled work as an assembly and production worker in an automobile parts plant; skilled job coach for an adult mental disability care facility.

(3) Disabling symptoms/complaints: unable to perform basic mental work activities as defined below because of short-term/long-term memory loss, anxiety, panic attacks being around people, and depression; unable to perform basic physical work activities as defined below because of chronic pain in back, neck, hips, right hand with loss of dexterity in the right hand, chronic abdominal pain, pain throughout body---muscle/joints, intermittent muscle spasms in arms, severe intermittent headaches/pain, and worsening shortness of breath.

(4) Substantial gainful work has not been performed since 1998.

(5) Medical reports of exam state that on:

[Mental Impairments]

(a) February 5, 2009 states a GAF of 50 (Claimant Exhibit B, page 7).

(b) February 5, 2009 mental residual functional capacity assessment report states the claimant is 'not significantly limited,' inability to remember locations and work-like procedures, to understand and remember one- or two-step instructions, to carry out simple, one- of two-step instructions, to sustain an ordinary routine without supervision, to make simple work-related decisions, to ask simple questions or request assistance, to accept instructions and respond appropriately to criticism from supervisors, to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, to respond appropriate to change in the work setting, to be aware of normal hazards and take appropriate precautions,

and to set realistic goals and make plans independently of others; and 'moderately limited' in ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, to work in coordination with or proximity to others without being distracted by them, to get along with coworkers or peers without distracting them or exhibiting behavioral extremes; (Claimant Exhibit B, pages 8 and 9).

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.

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 mental/physical impairment meets the department's definition of disability for Medicaid/SDA purposes. PEM 260/261.

Step 1 has been established per 20 CFR 416.920(b).

Step 2 determines whether the claimant, on date of application, had a severe mental/physical impairment as defined above, which had lasted or was expected to last for a continuous period of at least 12 months (90 days for SDA). 20 CFR 416.916(a) and (b). A *de minimus* standard has been applied in determining severity-----any ambiguities are determined in the claimant's favor.

Mental Impairment

The abovementioned GAF of 50 is considered a borderline severe/nonsevere impairment with job functioning. *Diagnostic and Statistical Manual of Mental Disorders (4th Edition—Revised)*.

The abovementioned mental residual functional capacity assessment report states that claimant is not “significantly” or only “moderately” limited in the understanding, remembering and carrying out simple (not complex) job directions. Therefore, the claimant has not established that she is significantly limited in performing basic mental work activities as defined above.

Physical Impairment

The physical medical reports are diagnostic/treatment reports and do not address the claimant's physical limitations in order to determine whether or not he meets the physical severity test defined. Therefore, a severe physical impairment has not been established.

The above medicals do not establish that the claimant is significantly limited in performing basic mental/physical work activities, as defined above, nor support his disabling symptoms/complaints stated above. Therefore, a severe impairment that has lasted for the required durations has not been established.

Let's assume a severe mental/physical impairment had been established. Then, the remaining question is whether, on date of application, the duration requirement was established. The medicals above do not establish this requirement. Therefore, Step 2 has not been established.

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 mental/physical 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: July 20, 2009

Date Mailed: July 20, 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

2009-268/was

cc:

