

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: 2009-345
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 28, 2009
Wayne 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 January 28, 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 April 2, 2008 the claimant applied for Medicaid/SDA and was denied on August 21, 2008 per PEM 260/261.

(2) Claimant's vocational factors: age 38, 9th grade education, and past work of unskilled/semiskilled worker on factory assembly line of small parts; unskilled driver for a paint company.

(3) Claimant's disabling symptoms/complaints are: mental strain and difficulty understanding directions; almost blind and glasses don't help; chronic numbness in right hand and relieved by medication; ability to lift/carry up to 75 pounds. Claimant has not performed substantial gainful activity since 2002.

(4) Claimant has not performed SGA since 2002.

[Mental Impairment]

(5) Medical exam on [REDACTED] states the claimant has a depth perception deficit; that he is not limited in comprehension, memory, sustained concentration, following simple instructions, reading/writing, and social interaction (Medical Packet, page 23).

[Physical Impairment]

(6) Medical exam on [REDACTED] states the claimant's condition is stable; that he needs no assistive device for ambulation; and that he can use his extremities on a repetitive basis (Medical Packet, page 23).

(7) Medical exam on [REDACTED] states the claimant can work at any job limited to no operating heavy equipment; that he must wear protective eyewear; and that he cannot judge depth (Medical Packet, page 24).

(8) Medical exam on [REDACTED] states the claimant has severe unsolved logic ophthalmologic disease; that his condition had worsened over the past year; that his optic nerve cupping has increased significantly on both sides and his visual acuity has deteriorated as well; and that without appropriate treatment, he is likely to go blind with his right eye within a short period of time (Medical Packet, page 5).

(9) SHRT report dated October 14, 2008 states the claimant(s) does not meet/equal a Social Security listing (Medical Packet, page 89).

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 the preponderance of the medical evidence in the record that is mental/physical impairment meets the department's definition of disability for Medicaid/SDA purposes. PEM 260/261.

Step One

Because the claimant was not performing substantial gainful work on date of his Medicaid/SDA application, he meets the Step One eligibility test per 20 CFR 416.920(b). Therefore, the analysis continues to the next step.

Step Two

This step 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)(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, on date of application, significantly limited him from performing basic work activities as defined above, **alone**, cannot establish a severe impairment, as defined above. 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 mental/physical impairment nor the claimant's disabling symptoms/complaints stated above.

Let's assume, on date of application, a severe impairment had been medically established. Then, the remaining question is whether it had lasted or was expected to last for a continuous period of at least 12 months (90 days for SDA). The objective medical evidence of 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 Two has not been established. However, the analysis will continue to the next step.

Step Three

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. Therefore, Step Three has not been established. However, the analysis will continue to the next step.

Step Four

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 not establish the claimant's inability to perform any of his past work, as stated above, for the required duration(s). Therefore, Step Four has not been established. However, the analysis will continue to the next step.

Step Five

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. The medical evidence stated above shows the claimant's inability to perform sedentary type work, as defined above, for the required duration(s). To the contrary, the medical evidence stated above shows the claimant's residual functional capacity for sedentary work.

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 factor stated above are not disabled out of this step. Medical-Vocational Rule 201.24.

Therefore, this Administrative Law Judge 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/SDA denial is UPHELD.

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

Date Signed: _____

Date Mailed: _____

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/om

cc:

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