

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: 2009-4820
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 15, 2009
Ingham 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 January 15, 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 exhibit A). After SHRT's second non-disability determination, the ALJ made the final decision below.

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 30, 2008, the claimant applied for Medicaid and for the retroactive month of May 2008 and was denied on September 17, 2008 per PEM 260.

(2) Claimant's vocational factors are: age 51, high school education, and past semiskilled work as a forklift driver, skilled work as a machine operator, semiskilled work as a maintenance worker, and unskilled work installing car parts in an auto plant.

(3) Claimant's disabling symptoms/complaints are: able to perform basic mental/physical work activities as defined below and the ability to lift/carry 10 to 15 pounds.

(4) Claimant has not performed substantial gainful work since August 2007.

[Mental Impairment]

(5) Medical exam on [REDACTED] states the claimant has no mental limitations (Medical Packet, page 7).

(6) Medical exam on [REDACTED] [REDACTED] states the claimant's thoughts appear to be organized; that affect is appropriate; and that he is oriented to person, place, and time (Claimant Exhibit A, page 15).

[Physical Impairment]

(7) Medical exam on [REDACTED] states the claimant out of an 8 hour work day can stand and/or walk less than 2 hours; that he cannot lift/carry any weight; that he needs no assistive device for ambulation; that he can use his extremities on a repetitive basis (Medical Packet, page 7).

(8) Medical exam on [REDACTED] states the claimant can work at any job (Medical Packet, page 5).

(9) Medical Exam on [REDACTED] states the claimant's motor strength is 5/5 and his extremities equal bilaterally (Claimant Exhibit A, page 15).

(10) Hospital discharge report of examination on [REDACTED] states the claimant has a history of polysubstance abuse, ETOH withdrawal, and alcohol abuse (Claimant Exhibit A, page 2).

(11) Medical exam on January 8, 2009 states the claimant binges with alcohol on the weekends; that he drinks both hard liquor and beer; and that he also has intermittent cocaine use (Claimant Exhibit A, page 12).

(12) SHRT report dated December 2, 2008 states the claimant's impairment(s) does not meet/equal a Social Security listing (Medical Packet, page 15).

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

Step One

Because the claimant was not performing substantial gainful work on date of his Medicaid 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. 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 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 symptoms and complaints stated above. To the contrary, the medical evidence shows a non-severe impairment, as defined above.

[Mental Impairment]

The above mentioned medicals in [REDACTED] and [REDACTED] clearly show the claimant has no mental impairment. He admits that he has the capacity for basic mental work activities, as defined above. Therefore, a severe mental impairment has not been established.

[Physical Impairment]

The above mentioned reports in [REDACTED] state the claimant cannot lift/carry any weight. But, the above mentioned medicals in [REDACTED] state the claimant has the capacity for any type of work. Also, the claimant testified that he has the capacity to perform basic physical work activities as defined above; and that he can lift/carry 10 to 15 pounds. Therefore, a severe physical impairment has not been established.

The above-mentioned medicals in [REDACTED] show that the claimant has been an alcoholic and drug abuser.

Alcoholics and drug abusers are not eligible for Medicaid if their alcoholism and drug abuse are a contributing factor material to the finding of disability, unless it is determined that the claimant is disabled independent of the alcoholism/drug abuse. 20 CFR 416.935.

If the objective medical evidence of record had established a severe mental/physical impairment, as defined above, then the claimant would have had the burden of proof to show that he met the disability factors independently of his alcoholism/drug abuse.

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.

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 duration requirement. 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, for the duration requirement.

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 factors stated above are not disabled under this step. Medical-Vocational Rule 201.15.

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 denial is UPHELD.

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

Date Signed: March 5, 2009

Date Mailed: March 5, 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/om

cc:

