

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: 2009-6746
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 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 March 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 June 10, 2008, the claimant applied for Medicaid/SDA and was denied on September 25, 2008 per PEM 260/261.

(2) Claimant's vocational factors are: age 47, high school education, and past semi-skilled work as a waitress/bartender requiring the lifting/carrying trays of food and/or drinks; semi-skilled mortgage seller for mortgage companies, requiring no lifting/carrying of weights

except by use of a cart; semi-skilled outside sales of cell phones requiring no lifting/carrying except by use of a cart.

(3) Claimant's medical diagnosis is: multiple sclerosis.

(4) Claimant's disabling symptoms/complaints are: mostly unable to perform basic physical work activities as defined below mostly because of multiple sclerosis, cannot perform stooping activities because of inability to arise, cannot perform prolonged sitting activities because of heavy feeling in legs, unless feet are elevated, cannot stand more than 10 to 15 minutes because legs feel heavy, poor hand coordination, weakness in ankles, and poor balance.

(5) Claimant has not performed substantial gainful work since September 2007 when she was fired.

[Physical Impairment only]

(6) Medical exam on [REDACTED] states the claimant's condition is stable; that out of an eight-hour workday she can stand/walk at least two hours; that she can lift/carry frequently less than ten pounds and occasionally ten pounds; that she needs no assistive device for ambulation; and that she can use her upper extremities on a repetitive basis (Medical Packet, page 11).

(7) Medical exam on [REDACTED] states the claimant is well-developed, well-nourished and in no visible distress; that there are no motor deficits, tremors, nor muscle atrophy with a diagnosis of multiple sclerosis, more or less stable, not under treatment lately (Medical Packet, page 17).

(8) SHRT report dated [REDACTED] states the claimant's impairment(s) did not meet/equal the Social Security Listings 11.02, 11.03, or 11.09 (Medical Packet, page 62).

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).

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 claimant has the burden of proof to establish by a preponderance of the medical evidence in the record that her physical impairment meets the department's definition of disability for Medicaid/SDA purposes. PEM 260/261.

Step #1

Because the claimant was not performing substantial gainful work on date of her Medicaid/SDA application, she meets the Step 1 eligibility requirement. 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 (90 days for SDA). 20 CFR 416.916(a)(b). A *de minimus* standard is applied in determining severity—any ambiguities that are determined in the claimant's favor.

The objective medical evidence stated above supports the claimant's severe physical impairment, but not the duration requirements as defined above.

On date of application, a severe physical 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 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.

SHRT determined the claimant's nondisability under listings mentioned above. No listings were cited by the claimant specifically addressing and approving her submitted any listings in her submitted medical reports. 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 her past work during the last 15 years, despite a severe impairment. 20 CFR 416.920(e).

The medical evidence stated above does not establish the claimant's inability to perform any of her past work, as stated above.

The objective medical evidence stated above shows that the claimant's past work was sedentary, as defined above. The medical evidence stated above shows the claimant's residual functional capacity for sedentary-type work.

The objective medical evidence stated above does not support the claimant's disabling symptoms/complaints, nor an inability to perform her past sedentary work as a seller of

mortgages for a mortgage company or outside sales for a cell phone company. Therefore, Step 4 has not 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. 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. To the contrary, the medical evidence stated above shows the claimant's residual functional capacity for sedentary work.

Applicants with a residual functional capacity limited to sedentary-type 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 201.21.

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, the Medicaid/SDA denial is UPHELD.

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

Date Signed: May 4, 2009

Date Mailed: May 6, 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:

