

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: 2009-7523
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2009
Genesee 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 May 5, 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). Continuance of the hearing requested by the claimant, was denied based on lack of good cause per PAM 600.

After SHRT's second nondisability determination, the final D&O was made 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) Negative action: Medicaid/SDA application on December 27, 2007 retroactive to September 2007 was denied on February 19, 2008 per PEM 260/261.

(2) Vocational factors are: age 49; 11th grade education; past unskilled jobs in construction work, cashier, factory work, and housekeeping duties.

(3) Substantial gainful activity: not since August 2006.

(4) Disabling symptoms/complaints: pain radiating from neck down both legs after sitting 15 minutes, pain radiating from low back down both legs after walking 15 to 20 minutes, intermittent pain in legs; weak right handgrip, pain in hips radiating down both legs after standing 5 minutes, pain from gripping things with right hand, limited to lifting/carrying 5 pounds, walker/cane prescribed by a doctor.

(5) Medical reports:

[Physical Impairment Only]

- (a) Report of exam July 8, 2008 states the claimant out of an eight-hour workday can stand and/or walk less than two hours and sit less than six hours; that she cannot lift/carry any weight; that she can use her upper extremities on a repetitive basis, except for reaching and pushing/pulling activities (Medical Packet, page 40).
- (b) Report of exam on October 9, 2008 states the claimant has a normal range of motion of the cervical spine, lumbar spine, shoulders, elbows, hips, knees, ankles, wrist, and hands-fingers (Medical Packet, pages 7 and 8).
- (c) Report of exam on October 9, 2008 states the claimant has the ability to sit, stand, bend, stoop, carry, push/pulling activities, button clothes, tie shoes, dress-undress, dial telephone, open door, make a fist, pick up coin, pick up pencil, rise from a squat and arise from squatting, getting on and off examining table, climb stairs, finger to finger, finger to nose; that gait was stable within normal limits (and that gait is still within normal limits) Medical Packet, pages 9 and 10).

- (d) SHRT report dated January 7, 2009 states the claimant's impairment(s) does not meet a Social Security listing 1.02 and 1.04 (Medical Packet, page 54).

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(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 burden of proof is on the claimant to establish by the preponderance of the medical evidence she has established Medicaid/SDA as defined above. PEM 260/261.

Five steps are followed in the determination of disability. If disability can be determined, or not determined, at any point in the review, the step evaluation stops. 20 CFR 416.920(a).

Step #1: Current Work Activity

Regardless of your medical condition, you are not disabled if you are performing substantial gainful work. 20 CFR 416.920(a).

The claimant was not working on date of application nor currently. Therefore, the sequential evaluation process continues to next step, #2.

Step #2: Impairments Severity/Duration

Disability requires the establishment of a severe impairment, as defined above, which has lasted or can be expected to last for continuous 12-month duration (90 days for SDA). Your impairment must be severe and meet the duration requirement before you can be determined disabled. Age, education, and work experience are not considered. 20 CFR 416.920(a) and (b).

The abovementioned medicals do not establish that the claimant was significantly limited on date of application from performing basic work activities, as defined above, for the required duration, nor support his disabling symptoms/complaints stated above. Therefore, claimant is not disabled under Step 2.

Step #3: Social Security Listing

Disability is established if a severe impairment/duration under Step 2 meets/equals a Social Security listing(s). Age, education, and work experience are not considered. 20 CFR 416.920(d).

Claimant introduced no medical evidence by a physician specifically addressing any Social Security listing(s). The SHRT physician considered the claimant under the abovementioned listings and determined him not disabled. Therefore, the claimant is not disabled under Step 3.

Step #4: Residual Functional Capacity for Past Relevant Work

Assuming a severe impairment/duration under Step 2, disability cannot be established with a remaining residual functional capacity for any past work during the last 15 years. 20 CFR 416.920(e).

The objective medical evidence does not support the claimant's inability to perform any of his past work, nor her disabling symptoms/complaints stated above. Therefore, the claimant is not disabled under Step 4.

Step #5: Residual Functional Capacity for Any Other Work

Assuming an inability to perform past jobs under Step 4, disability cannot be established with a remaining residual functional capacity for any other work. Vocational factors, such as age, education and work experience are considered. 20 CFR 416.920(f).

Claimant claims that she is disabled under Grid Rule 201.09. This grid applies to persons aged 50 to 54. On date of application, the claimant was age 49. Grid Rule 201.18, therefore, applies.

Persons with a residual functional capacity for sedentary-type work and the claimant's vocational factors stated above are not disabled. Medical-Vocational 201.18.

Therefore, this ALJ has not persuaded that disability has been established by the 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 physical disability was not medically established.

Accordingly, Medicaid/SDA denied is UPHELD.

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

Date Signed: June 16, 2009

Date Mailed: June 16, 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:

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