

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: 2009-8112
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 29, 2009
Washtenaw 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 29, 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 nondisability 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 December 26, 2007, the claimant applied for SDA and was denied on July 31, 2008 per PEM 261.

(2) Claimant's vocational factors are: age 49, high school education, and past semi-skilled work as a cashier, stocker in a department store, and scanner work in a department store.

(3) Claimant's disabling symptoms/complaints are: able to understand, remember and carryout simple job instructions; pain in low back after sitting 20 minutes, intermittent/chronic pain in hands; intermittent stiffening of fingers; able to lift and carry up to one gallon of milk (8 pounds); pain in back after walking 15 minutes; able to stand and stoop.

(4) Claimant has not performed substantial gainful work since September 2007 when she quit her job.

[MENTAL IMPAIRMENTS]

(5) Medical exam on April 2, 2008 states the claimant is fully conscious and oriented (Medical Packet, page 20).

[PHYSICAL IMPAIRMENTS]

(6) Medical exam on January 10, 2008 states the claimant is well-developed; that extremities have no swelling; that range of motions are equal and intact; that spine and back have no limited range of motion; and that range of motion of shoulders is good (Claimant Exhibit A, page 33).

(7) Medical exam on February 15, 2008 states the claimant's left wrist with point tenderness at the laterally dorsal aspect of the wrist with minor cyst palpitate; that other joints in the hand bilaterally are nontender; that range of motion is intact; that back has no point tenderness; his straight leg test was negative; that muscle strength is equal; that reflexes are intact; and that narcotic use could not be provided to claimant due to her history of polysubstance abuse in recent visit to the ER for an overdose (Claimant Exhibit A, page 35).

(8) Medical exam on April 2, 2008 states the claimant has mild scoliosis; that range of motion of the lumbar spine is normal; that slight leg raising causes no pain in upper to 60 degrees; that range of motion of all joints is normal, except left wrist which has a splint with somewhat decreased range of motion at risk; that range of motion of fingers and grip strength are normal; that he claimant is not totally disabled; that there is no motor or sensory loss; and that reflexes are normal and equal on both sides (Medical Packet, page 20).

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).

Facts above are undisputed.

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).

Claimant has the burden of proof to establish by a preponderance of the medical evidence in the record that the mental/physical impairment(s) meet the definition of disability for only SDA purposes. PEM 261.

The question is 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 90 days. PEM 261.

Claimant's claim that her disabling symptoms/complaints, on date of application, significantly limited her 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. To the contrary, the medical evidence shows a nonsevere impairment, as defined 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 90 days. 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. PEM 261. Therefore, a severe mental/physical impairment has not been established.

Also, the medical mentioned above on February 15, 2008 states the claimant had a history of polysubstance abuse in her recent visit to the ER for an overdose.

Polysubstance abusers are not eligible for SDA if their polysubstance abuse is a contributing factor material to the finding of disability, unless it is determined that the claimant is disabled independent of the polysubstance abuse. PEM 261.

The claimant offered no medical to establish that she was mentally/physically disabled independent of the polysubstance abuse.

Therefore, this ALJ is 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 disability was not medically established.

Accordingly, SDA denial is UPHELD.

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

Date Signed: March 17, 2009

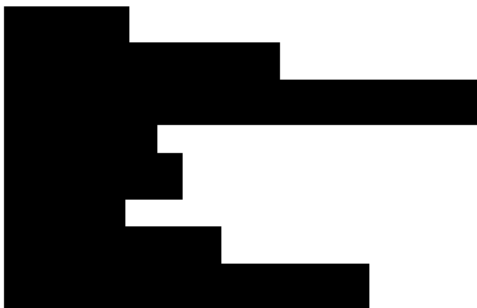
Date Mailed: March 18, 2009

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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