

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: 2009-8447
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 2, 2009
Muskegon 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 April 2, 2009.

The D&O was delayed at the claimant's request for a second SHRT review of additional medical reports presented after the hearing on April 8, 2009 (Claimant Exhibit A).

At claimant's request to obtain additional medical reports was approved based on good cause per PAM 600. After SHRT's second nondisability, the ALJ made the final decision.

ISSUE

Was physical disability medically established?

FINDINGS OF FACT

The Administrative Law Judge finds the below material/undisputed facts regarding the claimant:

(1) Medicaid/SDA application on August 15, 2008 was denied on October 8, 2008 per PEM 260/261.

(2) Vocational factors: age 54; high school education, and past semi-skilled work as a service technician of office equipment (fax/copy machines) and has been working before his application and currently part-time 15 to 16 hours a week, at \$15 an hour.

(3) Disabling symptoms/complaints: not able to work 40 hours a week at his current job as mentioned above or those that are under construction due to COPD, emphysema of the lungs, and 53% breathing capacity.

(4) Substantial gainful work: before application and currently, the claimant is still performing his semi-skilled service technician job mentioned above.

(5) Medical report of exam on:

- (a) [REDACTED] states the claimant may return to work starting with light duties and gradually advance to normal duties (Medical Packet, page 86).

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).

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" 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).

The burden of proof is on the claimant to establish by a preponderance of the medical evidence that he has established Medicaid/SDA disability as defined above. PEM 260/261.

Step #1

Step 1 has not been established because the claimant, on the date of application, has been performing substantial gainful work, as defined below.

Substantial gainful work is work activity that involves doing significant physical activities. The work may be substantial even if it is done on a **part-time** basis or if you do less, get paid less, or have less responsibility than when he worked before. 20 CFR 416.972(a).

Claimant testified that he is working as a building fire alarm installer/repairman 15 to 16 hours a week, instead of 40 hours because of the economy, earning \$15 an hour; that he does not feel that he can work 40 hours a week in his current job because of dust in the buildings under construction, where he installs the fire alarms due to breathing impairment; that he could do his other past work as a service technician of office equipment—fax/copy equipment—on a 40 hour basis; and that he could perform his past job as a recycling machine repairman, except for the heavy lifting.

Step #2

Step #2 has not been established. This step determines whether the claimant, on date of application, had a severe physical impairment as defined above, which has lasted or was expected to last for a continuous period of at least 12 months (90 days for SDA). 20 CFR 416.916(a) and (b). A *de minimus* standard is applied in determining severity—any ambiguities are determined in the claimant’s favor.

The above medicals do not establish that the claimant is significantly limited in performing basic physical work activities, as defined above, nor support his disabling symptoms/complaints, as stated above.

The medical reports introduced by the claimant are mostly diagnostic/treatment reports and do not address his physical limitations in order to determine whether he has a severe impairment, as defined above.

Let’s assume a severe physical impairment had been established. Then, the remaining question is whether, on date of application, the duration requirement was established. The medicals above do not establish this requirement. Therefore, the severity/duration requirement has not been established.

Step #3

Step 3 has not been established. This step determines whether the claimant, on date of application, meets/equals a Social Security listing and the durational requirement. Claimant introduced no medical evidence regarding any Social Security listed impairments by a treating or examining physician.

Step #4

Step 4 has not been established. This step determines whether the claimant, on date of application, was without a residual functional capacity for any of his past jobs during the last 15 years, despite a severe impairment. 20 CFR 416.920(e).

The medical stated above did not establish the claimant's inability to perform any of his past work, as stated above. He had been performing this past work and admitted that he has a residual functional capacity for earlier past work, such as servicing office machines on a 40-hour basis.

Step #5

Step 5 is not established. 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 stated above does not establish the claimant's inability to perform sedentary type work, as defined above.

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 considered disabled. Medical-Vocational Rule 201.15.

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 physical disability was not medically established.

Accordingly, Medicaid/SDA denial is UPHELD.

/s/

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

Date Signed: June 10, 2009

Date Mailed: June 10, 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:

