

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: 2009-94
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 8, 2009
Alcona 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 April 8, 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 D&O below.

ISSUE

Was disability medically established?

FINDINGS OF FACT

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

(1) Medicaid application retroactive to January 2008 on April 30, 2008 was denied on July 2, 2008 per PEM 260.

(2) Vocational factors: age 44, high school education, and past unskilled work in heavy labor or in construction work requiring lifting and carrying up to 100 pounds.

(3) Disabling symptoms/complaints: able to perform basic physical work activities as defined below limited to lifting/carrying 10 to 15 pounds, cannot stand more than 15 minutes, difficulty sitting because of right leg impairment, intermittent discomfort in tailbone area, chronic pain in right knee.

(4) Substantial gainful work last performed: 2000 when claimant was laid off.

(5) Medical reports of exams state that on:

- (a) [REDACTED], she was markedly intoxicated; that he stated that she has had a long history of alcohol abuse, and severe alcohol withdrawals in the past, including delirium, tremors and also seizures (Medical Packet, page 86).
- (b) [REDACTED], she was admitted to the hospital with acute alcohol intoxication in monitoring her alcohol withdrawal (Medical Packet, page 89).
- (c) [REDACTED], his condition was improving; that he cannot lift/carry any weight; that he needs crutches and will be nonweight bearing; and that he can use his upper and left lower extremities on a repetitive basis only (Medical Packet, page 47).
- (d) [REDACTED], his tibia fracture is stable and his knee is stable (Medical Packet, page 136).
- (e) [REDACTED] states his condition is improving; that he has no physical limitations; that he needs no assistive device or ambulation; that he has been discharged and then resumed normal work activities; that he is about nine months from right femur fracture and about five months from right tibia fracture; that those fractures have completely healed; that he has a range of motion from zero to 90 degrees without difficulty; and that overall his results have been excellent. (Claimant Exhibit A, pages 2 to 4.)

- (f) SHRT physician's second report dated [REDACTED] states the claimant's impairment does not meet/equal Social Security Listing 1.01.

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

Step #1

Step 1 has been established per 20 CFR 416.920(b).

Step #2

Step 2 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. 20 CFR 416.916(a) and (b). A *de minimus* standard is applied in determining severity—any ambiguities are determined from the claimant's favor.

The above medicals establish that the claimant was significantly limited in performing basic physical work activities, as defined above. Therefore, a severe physical impairment has been established.

The remaining question is whether, on date of application, the duration requirement was established. The medicals above do not establish this requirement. Therefore, the duration requirement has not been established.

Step #3

Step 3 determines whether the claimant, on date of application, the claimant's severe impairment meets/equals a Social Security Listing, and the duration requirement. Claimant claims he meets or/equals Social Security Listing 1.04, 1.02, 1.03 and 1.06. Claimant introduced no medical evidence specifically addressing these listings by a physician(s) regarding these listings. SHRT physician determined the claimant not disabled under the above listing. Therefore, Step 3 has not been established.

Step #4

Step 4 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. 20 CFR 416.920(b).

The medical evidence mentioned above establishes that claimant's inability to perform any of his past relevant work as stated above.

Step #5

Step 5 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 as 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 per Medical-Vocational Rule 201.27. Step 5 has not been established.

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.

Medicaid denial is UPHOLD.

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

Date Signed: May 28, 2009

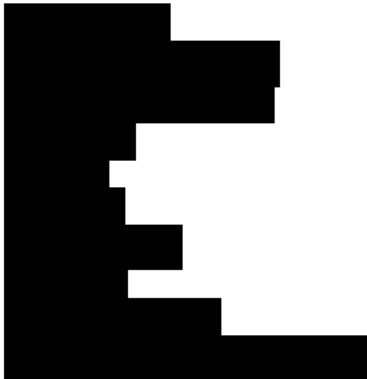
Date Mailed: May 29, 2009

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

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