

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: 2009-10885
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2009
Shiawassee 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 14, 2009.

ISSUE

Was physical disability medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds the below material/undisputed facts regarding the claimant:

- (1) Medicaid application on September 29, 2008 was denied on December 1, 2008 per PEM 260.
- (2) Vocational factors: age 53, 14 years of education, and past semi-skilled work as a bartender; semi-skilled work as a food waitress worker; semi-skilled manager of a convenience/gasoline store.

(3) Disabling symptoms/complaints: chronic fatigue, chronic soreness throughout body, vision changes requiring change in eyeglasses, intermittent swollen hands, and skin rash.

(4) Substantial gainful work: Currently working part time for the past four years while attending college, 2-3 days a week, 8 hours a day at minimum hourly wage of \$7.40.

(5) Medical reports of examinations:

[Physical Impairment Only]

- (a) September 16, 2008 states the claimant's condition is stable (Medical Packet, page 4).
- (b) October 22, 2008 states the claimant has hepatitis C, which will require treatment which includes interferon and Ribavirin which may cause the claimant a lot of fatigue and weakness, possibly resulting in her not being able to work (Medical Packet, page 5).
- (c) SHRT report dated January 29, 2009, states the claimant's impairments do not meet/equal a Social Security Listing(s) (Medical Packet, page 74).

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. If we can find that you are disabled or not disabled at any point in the review, we do not review further. 20 CFR 416.920(a). 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 she has established Medicaid disability, as defined above. PEM 260.

Step 1 has not been established. This step determines whether the claimant, on date of application, or currently is performing Substantial Gainful Work.

Substantial work activity is work activity that involves doing significant physical activities. Your 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 you worked before. 20 CFR 416.972.

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 had lasted or was expected to last for a continuous period of at least 12 months. 20 CFR 416.916(a)(b). A

de minimus standard is applied in determining severity---any ambiguities are determined in the claimant's favor.

The above medicals establish that the claimant is significantly limited in performing basic physical work activities, as defined above, and support her disabling symptoms/complaints stated above.

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 has not been established. This step determines whether the claimant, on date of application, meets/equals a Social Security listed impairment(s), and the duration requirement. Claimant introduced no medical evidence by a physician regarding any Social Security listing(s). And SHRT determined the claimant not disabled under the Social Security listings mentioned above.

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 her past jobs during the last 15 years, despite a severe impairment. 20 CFR 416.920(e).

The medicals stated above do not establish the claimant's inability to perform any of her past work, as stated above. To the contrary, the claimant is currently working part time in one of her past jobs.

Step 5 has not been 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 medicals stated above do 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.

Besides the medical reports mentioned above, the rest of the medical packet consisted of diagnostic/treatment reports and did not address the claimant's physical limitations.

Therefore, this Administrative Law Judge 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 denial is UPHELD.

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

Date Signed: July 14, 2009

Date Mailed: July 15, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

WAS/cv

cc:

