

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: 2009-11532
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 2009
Tuscola 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 March 12, 2009.

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 November 20, 2008, the claimant applied for SDA and was denied on December 16, 2008 per PEM 261.
- (2) Claimant's vocational factor are: age 27, high school equivalent education, and past unskilled work as a gas station attendant, semi-skilled group home worker for disabled adults, and unskilled retail merchandiser worker.

(3) Claimant's medical diagnosis is: fibromyalgia.

(4) Claimant's disabling symptoms/complaints are: able to perform basic mental work activities as defined below, limited by consuming pain in body; chronic foginess (cannot think), depression, cries easily, feels stupid and worthless, anxiety attacks, panic attacks being around people, difficulty expressing self, distracted by noise from other people, and intermittent suicidal thinking; cannot grasp simple things, upper body pain from pushing/pulling activities, low back pain from sitting 5 to 10 minutes, back of leg numbness radiating to toes after standing 5 to 10 minutes causing discomfort in low back, pain in knees when pushing cart in store, intermittent need for crutches not prescribed by a doctor, brace on left knee not prescribed by a doctor, intermittent burning pain in left shoulder, and cool weather causes joint pain.

(5) Claimant has not performed substantial gainful work since May 2006.

[Mental Impairment]

(6) Medical exam on February 14, 2008 states the claimant has no mental limitations (Medical Packet, page 31).

(7) Medical exam on March 25, 2008 states the claimant's GAF of 52 (Medical Packet, page 6).

(8) Medical exam on June 11, 2008 states the claimant is cooperative in answering questions and following commands; that immediate, recent and remote memory are intact with normal concentration; and that insight and judgment are appropriate (Medical Packet, page 12).

(9) Medical exam on November 10, 2008 states the claimant is limited in memory and social interaction (Medical Packet, page 17).

[Physical Impairment]

(10) Medical exam on June 11, 2008 states the claimant's range of motion is normal for the dorsolumbar and cervical spine; that there is a full fist and full grip strength bilaterally;

that pincher strength and finger abduction were normal; that dexterity is unimpaired; that she could button clothing and open a door, but wasn't able to pick up a coin; that she had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, but was off balance, ataxic with tandem gait and with moderate difficulty squatting; that motor strength and tone were normal; that rapid alternating movements were intact; and that the claimant walked with a normal gait without the use of an assistive device (Medical Packet, page 12 and 13).

(11) Medical exam on February 14, 2008 states the claimant out of an 8-hour work day can stand and/or walk about 6 hours; that she can lift/carry frequently less than 10 pounds and occasionally 25 pounds; that she needs no assistive device for ambulation; and that she can use her extremities on a repetitive basis, except for pushing/pulling activity (Medical Packet, page 31).

(12) Medical exam on November 10, 2008 states the claimant can lift/carry frequently less than 10 pounds; and that she cannot use her extremities on a repetitive basis (Medical Packet, page 17).

(13) SHRT report dated February 9, 2009 states the claimant's impairment(s) did not meet/equal the Social Security listed impairment(s) (Medical Packet, page 55).

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).

Note: 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 her mental/physical impairment(s) meets the department's definition of disability for SDA purposes. PEM 261.

The objective medical evidence stated above does not support the claimant's severe/duration requirement as defined above, nor her disabling complaints.

Mental Impairment

The above medicals state the claimant's GAF of 52. This is considered a person with a non-severe mental impairment and without job-function difficulty. Diagnostic and Statistical Manual of Mental Disorders (4th Edition--Revised). And states that the claimant has no mental limitations; that her immediate, recent and remote memory is intact with normal concentration, insight and judgment.

Physical Impairment

The above-mentioned medicals clearly show that the claimant has the residual functional capacity to perform sedentary/light type work as defined above. She has the medical residual functional capacity to frequently lift/carry up to 10 pounds and occasionally 25 pounds.

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 does not establish this duration requirement. Before you can be determined disabled, the severity/duration requirement must be

established by the objective medical evidence. Therefore, the severity/duration requirement has not been established.

Therefore, this Administrative Law Judge is not persuaded that disability has been established by a 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: July 7, 2009

Date Mailed: July 8, 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/cv

cc:

