

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: 2009-12268

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 26, 2009

Ottawa 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 26, 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). Claimant's request of continuance of the hearing to obtain additional medical reports was denied based on lack of good cause per PAM 600.

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 June 15, 2006, the claimant applied for Medicaid and was denied on August 8, 2006 per PEM 260.

(2) Claimant's vocational factors are: age 54; 12<sup>th</sup> grade education; and past semi-skilled retail sales in a hardware business and semi-skilled small engine repair.

(3) Claimant's disabling symptoms/complaints are: able to perform basic work activities as defined below limited by his attention span, depression, and anxieties; physical limitations are: walking limited to half an hour, once a week shortness of breath, cannot bend and return, low/mid back pain from prolonged sitting/standing for 45 minutes, able to frequently lift/carry ten pounds, and occasionally 15 pounds, intermittent chest pain, and had heart attack in March of 2006.

(4) Claimant has not performed substantial gainful work since the fall of 2006.

(5) Medical examinations:

#### **MENTAL IMPAIRMENTS**

- (a) Report of exam March 24, 2006 states the claimant is alert, oriented, and in no acute distress (Medical Packet, page 32).
- (b) Report of exam April 21, 2006 states the claimant denies any depression/anxiety; that he was alert, oriented to time, person, and place, and in no acute distress; that he had no difficulty with speech, language and memory (Medical Packet, page 19).
- (c) Report of exam October 24, 2006 states the claimant has no mental limitations (Claimant Exhibit A, page 7).

#### **PHYSICAL IMPAIRMENTS**

- (d) Report of exam on April 21, 2006 states the claimant has no spinal abnormalities; and that muscle strength and tone of the extremities in back are normal (Medical Packet, page 20).

- (e) Report of exam October 24, 2006, states the claimant's condition is stable; that out of an eight-hour workday, he can stand/walk less than two hours; that he needs no assistive device for ambulation; and that he can use his upper extremities on a repetitive basis, except for reaching and pushing/pulling activities (Claimant Exhibit A, page 7).
- (f) SHRT report dated February 18, 2009, states the claimant's impairments do not meet Social Security listings 4.01 and 12.01 (Medical Packet, page 46).

### 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).

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 the preponderance of the medical evidence in the record that his mental/physical impairment meets the department's definition of disability for Medicaid purposes. PEM 260.

**Step #1: Current Work Activity**

Because the claimant was not performing substantial gainful work on date of his Medicaid application, he meets the Step 1 eligibility test. 20 CFR 416.920(b).

**Step #2: Impairment Severity/Duration**

This step determines whether the claimant, on date of application, had a severe mental/physical impairment as defined above, which has lasted or is 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 in the claimant's favor.

The objective medical evidence of record and stated above, do not support a severe mental impairment, as defined above, but does support a severe physical impairment based on the claimant's heart attack in March 2006. But, the duration requirement for the severe physical impairment has not been medically established. Also, the claimant testified that he had the residual functional capacity for sedentary/light type work such as a greeter at a [REDACTED] store and issuing tickets at a theater.

The claimant testified that he last worked in the fall of 2006. This was after his heart attack. Therefore, he was not disabled for the 12-month duration.

Otherwise, the medicals in this case are diagnostic/treatment reports, and do not address the claimant's work limitations in order to determine whether he has a severe impairment, as defined above. Therefore, Step 2 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 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: June 15, 2009

Date Mailed: June 16, 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

2009-12268/was

cc:

