

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: 2009-14782
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 18, 2009
Washtenaw 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 June 18, 2009.

The below D&O was delayed for reports presented at the hearing (Claimant Exhibit A).

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) Negative action: Denial on December 5, 2008 of Medicaid/SDA application on July 17, 2008 based on nondisability per PEM 260/261.

(2) Vocational factors: age 49, GED, and past unskilled work as a parking lot attendant, road work flagman directing traffic, and clothing store maintenance worker.

(3) Substantial gainful work: Not since April 8 when the claimant quit his job.

(4) Disabling symptoms/complaints: Unable to perform basic mental activities because of forgetfulness, poor memory, depression, and anxiety; unable to perform basic physical work activities as defined below because of pain in low back radiating down both legs after sitting one minute, pain in low back with a shooting pain in the back after standing three minutes; otherwise all physical movements cause pain and discomfort; and unable to lift/carry more than four to three pounds because of pain.

(5) Reports of medical exams on:

[mental impairment]

- (a) May 7, 2007 and May 16, 2007 state the claimant's GAF of 55 based on a diagnosis of bipolar disorder and polysubstance dependence (Claimant Exhibit A, pages 9 and 16).
- (b) April 29, 2008 states the claimant is 'moderately limited' in ability to remember locations and work-like procedures, to understand and remember two-step instructions, to carry out simple, one- or two-step instructions, to make simple work-related decisions, to ask simple questions or request assistance, to maintain socially appropriate behavior and to adhere to basic standards of maintenance and cleanliness, to be aware of normal hazards and appropriate precautions, to travel in unfamiliar places or use transportation, and set realistic goals or make time (Medical Packet).
- (c) July 3, 2008 states the claimant has no mental limitations (Medical Packet).
- (d) November 6, 2008 states the claimant's GAF of 55 based on diagnosis of cocaine abuse/dependence (Medical Packet).
- (e) January 26, 2009 states the claimant reported a complex history of chronic polysubstance dependence, mood disturbance, anxiety, and significant health problems; that he described bipolar-like symptoms, although it is unclear to what degree these symptoms might be attributed to his

drug abuse; that it should be noted that chronic use of many drugs and/or use of different drugs in combinations that involve complications such as paranoid ideation, aggressive behavior, anxiety, and/or depression, among many other mental or physical health problems; and that the claimant should be considered for job placement once he has instituted the appropriate interventions and has maintained a substance abuse-free lifestyle for a minimum of three months (Claimant Exhibit A, pages 4 and 5).

[physical impairments]

- (d) July 3, 2008, states the claimant's condition was stable; that out of an eight-hour workday, he can stand and/or walk less than two hours and sit about six hours. That he can lift/carry occasionally ten pounds; and that he needs no assistive device for ambulations; and that he cannot use his extremities on a repetitive basis (Medical Packet).
- (e) November 4, 2008 states the claimant has mild degenerative changes of the lower lumbar spine (Claimant Exhibit A, page 17).
- (f) February 9, 2009 states the claimant is in no acute distress; that he is steady, and narrow based; that he rules all extremities mostly and equally and symmetrically; and that there are no skeletal abnormalities (Medical Packet)(Claimant Exhibit A, page 19).
- (i) On March 19, 2009 SHRT report states the claimant's impairments did not meet/equal Social Security Listings 1.01, 14.01 and 12.01 (Medical Packet, page 9).

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).

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.

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.

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 disability by the preponderance of the objective medical evidence. PEM 260/261.

Step #1: Current Work Activity

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

On date of application, the claimant was not working, nor currently. Therefore, the sequential evaluation continues to Step 2.

Step #2: Impairment, Severity/Duration

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

A *de minimus* standard is used to determine the determination of a severe impairment-----

any ambiguities are determined in the claimant's favor.

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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

On date of Medicaid application, the above-mentioned medical reports do not establish a severe impairment, as defined above, for the required duration, nor support the claimant's disabling symptoms/complaints stated above. To the contrary, the medicals show a nonsevere impairment, as defined above.

Also, the medical reports introduced into the record were mostly diagnostic/treatment reports and did not address the claimant's mental/physical limitations in order to determine whether or not he was significantly limited in performing basic work activities.

Because both severity and duration must be established at Step 2 before further review, an ultimate favorable disability determination cannot result. Step 2 has not been established.

Drug Addiction

Let's assume that the claimant reached disability at Step 5. Then, the remaining question would be whether his drug addiction is a contributing factor material to the determination of disability.

The test of materiality is whether the claimant would still be disabled if he stopped using drugs. PEM 260/261.

This question was not considered because the claimant was not disabled at Step 5.

Therefore, this ALJ is not persuaded that disability was established by the preponderance of the medical evidence. PEM 260/261.

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/SDA denial is UPHELD.

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

Date Signed: August 10, 2009

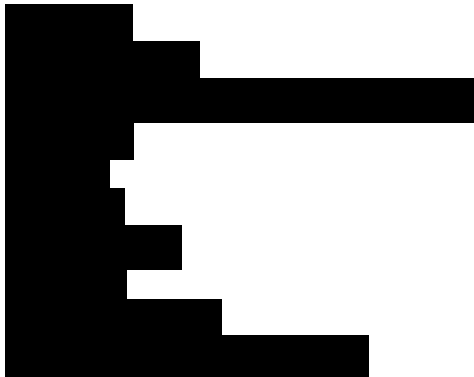
Date Mailed: August 10, 2009

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:

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