

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: 2009-15763
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2009
Genesee 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 May 5, 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 final decision was made 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) Negative action: Medicaid application on February 28, 2008 was denied on October 1, 2008 per PEM 260.

(2) Vocational factors: age 58, 10th grade education, and past semi-skilled work as a video clerk and cashier.

(3) Substantial gainful activity: not since 2005.

(4) Disabling symptoms/complaints: Claimant has a nervous condition, gets upset easily, difficulty with comprehension, and depressed; chronic pain in legs, intermittent neck/shoulder pain, intermittent chest pain, intermittent back pain, difficulty breathing, shortness of breath, loses control of bowels and urination, pain in legs after walking 25 feet, pain in back after sitting 20 minutes.

(5) Medical exams:

[Mental Impairment]

- (a) Report of exam March 19, 2008 states the claimant has no mental limitations (Medical Packet, page 26).
- (b) Report of exam April 28, 2009 states that the claimant has no mental limitations (Medical Packet, page 50).

[Physical Impairment]

- (c) Report of exam March 19, 2008 states the claimant's condition is stable; that she has no physical limitations; that she needs no assistive device for ambulation; and that she can use her extremities on a repetitive basis (Medical Packet, page 26).
- (d) Report of exam September 8, 2008 states the claimant has a normal range of motion of the cervical spine, lumbar spine, shoulders, elbows, hips, knees, ankles, wrist, hands-fingers (Medical Packet, pages 68 and 68).
- (e) SHRT Report April 2, 2009 states the claimant's impairments) do not meet/equal a Social Security listing. (Medical Packet, page 137).
- (f) Report of exam April 28, 2009 states the clamant needs no assistive device for ambulation (Claimant Exhibit A, page 50).

(g) Report of exam April 28, 2009 states:

'Classification of patient with heart disease' states patients with cardiac disease resulting in slight limitation of physical activity (Claimant Exhibit A, page 47).

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).

The burden of proof is on the claimant to establish by the preponderance of the medical evidence that she has established Medicaid disability as defined above. PEM 260.

Five steps are followed in the determination of disability. If disability can be determined, or not determined, at any point in the review, the step evaluation stops. 20 CFR 416.920(a).

Step #1: Current work activity.

Regardless of your condition, you are not disabled if you are performing substantial gainful work, 20 CFR 416.920(a).

The claimant was not working on date of application or currently. Therefore, the sequential evaluation continues to Step 2.

Step #2: Impairment severity/duration.

Disability requires the establishment of severe impairment, as defined above, on date of application which has lasted or can be expected to last for continuous 12 month duration. Your impairment must be severe and meet the duration requirement before you can be determined disabled. Age, education and work experience are not considered. 20 CFR 416.920(a) and (b).

The abovementioned medicals do not establish that the claimant was significantly limited on date of application from performing basic work activities, as defined above, for the required duration, nor support his disabling symptoms/complaints stated above. Therefore, claimant is not disabled under Step 2.

The claimant's medicals and testimony regarding her heart attack were more than one year after her Medicaid application. The medicals in March 2008 state the claimant had no

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mental/physical limitations. In April 2009 (over one year after the application) the medicals still state the claimant has no mental limitations. 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 mental/physical disability was not medically established.

Medicaid denial is UPHELD.

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

Date Signed: June 22, 2009

Date Mailed: June 22, 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.

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