

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: 2009-16491
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 20, 2009
Calhoun 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 20, 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 decision, the final D&O 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/SDA application on September 23, 2008 was denied on November 14, 2008 for Medicaid and approved for SDA effective October 8, 2008 and terminated February 2009 without a request for a hearing.

(2) Vocational factors: age 43, 12th grade education, and past unskilled maintenance/housekeeping work.

(3) Substantial activity: Not since December 21, 2007 when claimant injured his ankle from a “slip and fall.”

(4) Disabling symptoms/complaints: Medication makes the claimant sleep and weak, and depressed; pain/swelling in ankle from standing or walking. Stopped using cane May 1, 2008; able to lift/carry 20 pounds if standing on left side.

(5) Medical exams:

[Mental Impairment]

- (a) Report of exam, June 13, 2008, states the claimant has no mental limitations (Medical Packet, page 14).
- (b) Report of exam, December 17, 2008, states the claimant has no mental limitations (Claimant Exhibit A, page 2).

[Physical Impairments]

- (c) Report of exam, June 13, 2008, states the claimant out of an eight-hour work date can stand and/or walk less than two hours; that he can lift/carry occasionally less than 10 pounds; that he would need a wheelchair after surgery; that he is unable to ambulate due to scheduled hip surgery (Medical Packet, page 14).
- (d) Report of exam, December 17, 2008, states the claimant’s condition is improving; that out of an eight-hour workday, he can stand and/or walk less than two hours; that he can lift/carry frequently 20 pounds and occasionally 50 pounds or more; that he can use his extremities on a repetitive basis (Claimant Exhibit A, page 2).

- (e) Report of exam, December 28, 2007, states the claimant should not do any weight bearing on left leg regarding left ankle. (Claimant Exhibit A, page 4.)

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The 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.

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 medical evidence. PEM 260.

Step #1: Current Work Activities

...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).

The claimant was not working on date of application, 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).

The *de minimus* standard is used in the determination of a severe impairment-----any ambiguities as decided 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.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(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).

On date of application, the above medicals do not establish a severe physical impairment for the required duration. Your impairment must be severe and meet the durational requirement before you can be determined disabled. 20 CFR 416.920(a). Therefore, this step has not been established. Also, the above medicals state the claimant has no severe mental impairment. The medicals on December 17, 2008 (less than 12 months after the injury) show that the claimant had a residual functional capacity for light-type work as defined above, which includes the ability to perform sedentary-type work as defined above. Even before this date the medicals above state the claimant out of an eight-hour workday can stand and/or walk less than two hours; that he can work/carry occasionally less than ten pounds. Step 2 has not been established.

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 mental/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 9, 2009

Date Mailed: July 9, 2009

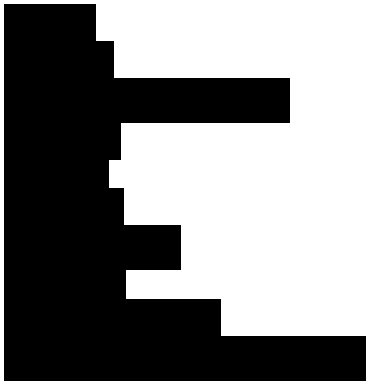
2009-16491/was

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:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.