

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: 2009-16819

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 3, 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 June 3, 2009.

The below D&O was delayed 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 December 9, 2008 was denied on February 12, 2009 based on nondisability per PEM 260.

(2) Vocational factors: age 50, 12th grade education, and semi-skilled bar-grill manager, semi-skilled self-employed small diner, and unskilled pizza business worker.

(3) Substantial gainful work: Not since quitting job on July 12, 2008.

(4) Symptoms/complaints: Unable to perform basic mental work activities as defined below because of medications; unable to perform basic physical work activities as defined below due to upper body tiredness and poor balance after standing 15 minutes, pain in low back/left leg/groin after sitting two hours, pain radiating down right to seat after sitting, limited walking 50 feet, pain in back radiating down left leg when using her upper extremities, pain in low back, legs and groin after lifting/carrying up to eight pounds, pain in left groin from twisting movements, pain in back/groin getting in and out of a car, sickness due to constipation, and knees/back brace prescribed by a doctor.

[Medical Exams] (Mental Impairment)

- (a) Report of June 25, 2008 states that the claimant has no mental limitations (Medical Packet, page 144).
- (b) Report of July 25, 2008 states the claimant has no mental limitations (Medical Packet, page 68).
- (c) Report of August 21, 2008 states the claimant's mood and affect are normal; that she is oriented x3; that attention span is normal; and that memory is good (Medical Packet, page 62).
- (d) Report of September 17, 2008 states the claimant is alert and oriented (Medical Packet, page 30).
- (e) Report of September 27, 2008 states the claimant's GAF is 55 based on an included diagnoses with history of marijuana and cocaine use (Claimant Exhibit A, page 3).
- (f) Report of February 23, 2009 states the claimant has no mental limitations (Claimant Exhibit A, page 39).

[Physical Impairments]

- (g) Report of June 25, 2008 states the claimant is temporarily disabled for approximately eight weeks after surgery; that she can lift/carry occasionally 20 pounds; and that she is not to do any work of any kind until after surgery (Medical Packet, page 144).
- (h) Report of July 25, 2008 states the claimant is limited to no bending, twisting, or prolonged standing; that out of an eight-hour day, she can stand and/or walk less than two hours; that she needs no assistive device for ambulation; that she can use her upper extremities on a repetitive basis, except for reaching and pushing/pulling activities (Medical Packet, page 69).
- (i) Report of July 25, 2008 states claimant is limited to frequent lifting/carrying of ten pounds and rarely 20 pounds; that she should not do any bending, twisting, prolonged standing or sitting (Medical Packet, page 67).
- (j) Report of August 21, 2008 states the claimant's gait was markedly antalgic; that straight leg raise on the left side was positive; that motor exam did not reveal any focal motor deficits (Medical Packet, page 62).
- (k) Report of September 17, 2008 states the claimant's arms show normal strength, sensation and deep tendon reflexes; that she has a restricted straight leg raise bilaterally to about 30 degrees secondary to back pain (Medical Packet, page 30).
- (l) Report of February 23, 2009 states the claimant's condition is stable, that she can frequently lift/carry 50 pounds or more; and that she can use her upper extremities on a repetitive basis, except for reaching, pushing/pulling and fine manipulating activities (Claimant Exhibit A, page 30).
- (m) SHRT report dated April 9, 2009 states the claimant's impairment(s) do not meet/equal a Social Security Listing (Medical Packet, page 250).

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.

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 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).

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).

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

[Mental Impairments]

The above medicals do not establish a severe mental impairment. To the contrary, these medicals state the claimant has no mental impairment(s).

Physical Impairments

The above medicals do not establish a severe physical impairment continuously lasting for the required duration. These medicals are inconsistent. On the one hand, they state the claimant should not do any bending/twisting movements. On the other hand, these medicals state the claimant has the capacity to frequently lift/carry ten pounds and occasionally 20 pounds. In February 2009, the medical report above states the claimant can frequently lift/carry 50 pounds or more. This ALJ does not understand how the claimant is able to lift/carry all this weight without bending/twisting body movements.

The claimant testified that her cane/back brace are prescribed by her physician in pages 37, 58 and 70 of the Medical Packet for her prescription. This ALJ has looked at these pages. There is no mention of a need for any assistive devices. To the contrary, the above report dated July 25, 2008 states the claimant needs no assistive device for ambulation.

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

Because severity and duration must be established at Step 2 before further review, an alternate favorable disability determination cannot result. 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 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 14, 2009

Date Mailed: July 15, 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:

