

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: 2009-19427  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 6, 2009  
Chippewa 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 August 6, 2009.

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 February 6, 2009 was denied on March 3, 2009 based on nondisability per PEM 260/261.
- (2) Vocational factors: age 42, 10<sup>th</sup> grade education, and past skilled work as a team leader, trainer and operator in factory operations.
- (3) Substantial gainful work: Not since July 18, 2008.

(4) Disabling symptoms/complaints: limited in sitting to half hour due to low back pain, standing 20 minutes due to right leg pain, walking 200 feet due to right leg/low back pain, pushing/pulling activities due to right leg/back pain, reaching activities due to right leg/back pain, and lifting/carrying 10 to 15 pounds.

(5) Reports of exams on:

**[Physical Impairment Only]**

- (a) July 22, 2008 states the claimant was unable to participate in tiptoe, heel walk, and tandem gait related to pain; that she was unable and/or unwilling to do any flexion/extension, or lateral bending movements of the lumbar spine related to her pain complex; that her strength was 5/5; that straight leg raise was positive for pain down the leg into the calf (Medical Packet, page 238).
- (b) October 15, 2008 states the claimant had a right L5-S1 disc excision on July 23, 2008 for incapacitating radiculopathy; that she was basically wheelchair bound preoperatively; that her surgical incision is well-healed; that she walks with a very antalgic, painful gait; that straight leg raising maneuvers are negative on the left and positive on the right; and that strength is 5/5 (Medical Packet, page 84).
- (c) October 27, 2008 states the claimant can lift/carry frequently ten pounds and occasionally 20 pounds; that out of an eight-hour workday she can stand and/or walk about six hours with a medically required hand-assisted device for ambulation over long distances or rough terrain, and sit for about six hours with periodic often sitting and standing to relieve discomfort; that she is limited to pushing/pulling activities in lower extremities; that her allegations are supported by her medical evidence, and her statements that she can only walk five minutes is not consistent with the medical evidence (Medical Packet, pages 77 to 81).

**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).

**Burden of proof is on the claimant** to establish disability by the preponderance of the medical evidence of record. 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 must continue to Step 2.

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

To qualify for MA-P, claimant must first satisfy both the gainful work and the duration criteria (20 CFR 416.920(a)) before further review under severity criteria. If claimant does not have any impairment or combination of impairments which significantly limits physical or mental ability to do basic work activities, an ultimately favorable disability determination cannot result. (20 CFR 416.920(c)).

...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 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 application, the above medicals do not establish a severe physical impairment, as defined above, for the required one-year continuous duration (90 days for SDA) or support the claimant's disabling symptoms/complaints stated above.

Most of the medicals, in this case, are diagnostic/treatment reports that do not address the claimant's physical limitations in order to determine whether she is significantly limited in performing basic work activities for the required durations.

Both severity and duration must be established as Step 2 before further review. Otherwise, an ultimate favorable disability determination cannot result. Step 2 has not been established.

Therefore, this ALJ is not persuaded that disability has been established by the preponderance of the medical evidence of record.

#### 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: October 5, 2009

Date Mailed: October 5, 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:

