

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: 2009-3766
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 4, 2009
Van Buren 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 March 4, 2009.

Claimant's requested continuance of the hearing to obtain additional medical reports was denied based on lack of good cause per PEM 600.

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) On April 14, 2008 the claimant applied for Medicaid and was denied on July 23, 2008 per PEM 260.

(2) Claimant's vocational factors are: age 26, 11th-grade education, and past semi-skilled construction worker requiring the lifting/carrying up to 75 pounds; semi-skilled roofing worker requiring the lifting/carrying up to 75 pounds; unskilled fast food worker requiring the lifting/carrying up to 50 pounds; semi-skilled worker for [REDACTED] moving appliances and furniture requiring the pushing/pulling of over 100 pounds; unskilled summer recreational counselor for children requiring no lifting/carrying of weight; unskilled car washer requiring the lifting/carrying up to 4 pounds.

(3) On April 6, 2008 the claimant receiving gunshot wounds to the left hand, face, leg, abdomen, and mandible; prior to the injury the claimant was able to work.

(4) Claimant's disabling symptoms/complaints are: unable to perform basic mental work activities defined below because of nightmares, daydreaming about the gunshot incident, mood swings, wakes up angry, depressed, and difficulty getting along with people; unable to perform basic physical work activities as defined below because of pain in body from physical movements, low back and leg pain from standing 5 to 10 minutes, low back and leg pain from sitting 5 to 10 minutes, chronic pain in left hand-fingers (left handed), intermittent pain in stomach radiating up into chest, and right leg/hip pain.

(5) Claimant has not performed substantial gainful work since June 2007 when he quit his job, but was still able to work until he received the above-mentioned gunshot wounds.

[Physical Impairment]

(6) Medical exam on [REDACTED] states the claimant's back spine has a good range of motion; and that gait is normal and muscle strength remains good (Medical Packet, p. 76).

(7) SHRT report dated [REDACTED] states the claimant's impairment(s) does not meet/equal a Social Security listed impairment (Medical Packet, p. 81).

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 (formerly known as the Family Independence Agency) 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).

Claimant has the burden of proof to establish by a preponderance of the medical evidence in the record that his mental/physical impairment(s) meets the department's definition of disability for Medicaid purposes. PEM 260.

STEP 1

Because the claimant was not performing substantial gainful work on date of his Medicaid application, he meets the Step 1 eligibility test. 20 CFR 416.920(b).

STEP 2

This step determines whether the claimant, on date of application, had a severe mental/physical impairment as defined above, which had lasted or was expected to last for a continuous period of at least 12 months. 20 CFR 416.916(a)(b). A *de minimus* standard is applied in determining the severity-----any ambiguities are determined in the claimant's favor.

The objective medical evidence stated above supports the claimant's severe physical impairment but not the duration requirement, nor it does it support a severe mental impairment, as defined above.

On date of application, a severe physical impairment had been medically established. Then, the remaining question is whether it had lasted or was expected to last for a continuous period of at least 12 months. The objective medical evidence does not address this duration requirement, nor does it address a mental impairment. Before you can be determined disabled,

the severity/duration requirement must be established by the objective medical evidence. 20 CFR 416.920(a). Therefore, Step 2 has not been established.

This ALJ has analyzed the medical packet of record. It does not address a mental impairment.

STEP 3

This step determines whether the claimant, on date of application, meets/equals a Social Security listed impairment, and the duration requirement.

SHRT determined the claimant non-disabled under Listings 1.02 and 1.04. No listings were cited by the claimant specifically addressing and approving any listings in his submitted medical reports. Therefore, Step 3 has not been established.

STEP 4

This step determines whether the claimant, on date of application, was without a residual functional capacity for any of his past work during the last 15 years, despite a severe impairment. 20 CFR 416.920(e).

The medical evidence stated above does not establish the claimant's inability to perform any of his past work, as stated above.

The claimant testified that he is left-handed and as it was developed by his representative he still has a residual functional capacity for lifting up to 10 to 20 pounds with that hand. His past job as a summer recreational counselor for children required no lifting/carrying of weight and his past job as a car washer required the lifting/carrying up to 4 pounds. These past jobs are within the claimant's residual functional capacity. Therefore, Step 4 has not been established.

STEP 5

This step determines whether the claimant, on date of application, was without a residual functional capacity for any other work despite a severe impairment. 20 CFR 416.920(f).

The medical evidence of record does not address the residual functional capacity for sedentary type work nor support the claimant's disabling symptoms/complaints.

Applicants with a residual functional capacity limited to sedentary type work as a result of a severe medically determinable physical impairment(s), and the claimant's vocational factors stated above are not disabled under this step. Medical-Vocational Rule 201.24.

Therefore, this ALJ is not persuaded that disability has been established by a 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 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: May 4, 2009

Date Mailed: May 6, 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/vmc

cc:

