

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: 2009-4821
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 10, 2009
Ingham 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, a telephone hearing was held on March 10, 2009.

The D&O was delayed at the claimant's request for a second SHRT review of additional medical reports presented after the hearing on March 12, 2009 (Claimant Exhibit A). After SHRT's second nondisability determination, the ALJ made the final decision 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) On August 21, 2008, the claimant applied for Medicaid retroactive to May 2008/SDA and was denied on October 13, 2008 per PEM 260/261.

(2) Claimant's vocational factors are: age 43; 12th grade education; and past work as a semi-skilled pizza deliverer.

(3) Claimant's medical diagnoses are: schizoaffective disorder and cannabis dependence.

(4) Claimant's disabling symptoms/complaints are: able to perform basic mental work activities as defined below with difficulty from his mental diagnosis above.

[Mental Impairment Only]

Able to perform basic mental work activities as defined below with limitations based on his diagnoses.

(5) Claimant has not performed substantial gainful work since [REDACTED] when he had a mental breakdown.

(6) Medical exam on [REDACTED] states the claimant's approximate GAF of 40 with an included diagnosis of cannabis dependence (Claimant Exhibit A, page 82).

(7) Medical care from [REDACTED] on [REDACTED] through [REDACTED] states the claimant's GAF of 50 with an included diagnosis of cannabis dependence (Claimant Exhibit A, page 74).

(8) Medical exam on August 7, 2008 states the claimant is limited mentally because of severe depression with schizoid tendency (Medical Packet, page 20).

(9) SHRT report dated December 4, 2008 states the claimant's impairment(s) do not meet/equal Social Security Listings 12.04, 12.06, 12.08, or 12.09 (Medical Packet, page 29).

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.

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 impairment meets the department's definition of disability for Medicaid/SDA purposes. PEM 260/261.

Step #1

Because the claimant was not performing substantial gainful work on date of his Medicaid/SDA 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 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) and (b). A *de minimus* standard is applied when determining severity—any ambiguities are determined in the claimant’s favor.

The objective medical evidence stated above supports the claimant’s severe/duration, as defined above.

Mental Impairment

The medicals mentioned above show GAFs of 40 and 50. 50 is considered a person with a serious impairment and unable to keep a job. 40 is considered a major impairment with judgment, thinking, or mood and unable to work. Diagnostic and Statistical Evaluation of Mental Disorders (4th Edition—Revised).

The above medicals show the claimant is substance dependent. Substance abusers are not eligible for Medicaid if their substance abuse is a contributing factor material to the finding of disability, unless it is determined that the claimant is disabled independent of the substance abuse. PEM 260/261.

The claimant offered no medical proof that he meets the disability factors independently of his drug dependence.

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/SDA denial is UPHELD.

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

Date Signed: June 8, 2009

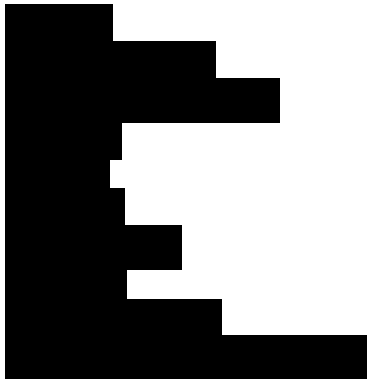
Date Mailed: June 8, 2009

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:

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