

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: 2009-6520
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 25, 2009
Marquette 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 February 25, 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 26, 2009 (Claimant Exhibit A). After SHRT's second non-disability determination, the ALJ made the final decision below.

ISSUE

Was physical disability medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds the below material/undisputed facts regarding the claimant:

(1) Medicaid application on July 14, 2008, retroactive to June 1, 2008, was denied on October 6, 2008 per PEM 260; and SDA was approved on August 1, 2008.

(2) Vocational factors: age 29, 12th grade education, and past unskilled work in retail operations and cashiering.

(3) Disabling symptoms/complaints: difficulty walking because of poor balance; difficulty breathing and tiredness; mild pain in low back from walking/reaching activities; limited in lifting/carrying to a small glass of soda pop.

(4) Substantial gainful work: Last worked in January 2007, when she was laid off.

(5) Medical examination reports:

[Physical Impairment Only]

(a) Medical exam report on June 11, 2008 states that the claimant underwent an operation sleeve gastrectomy for morbid obesity, that on July 1, 2008, the physiatrist stated the claimant did not require placement into a rehab facility nor a skilled nursing facility and that claimant could function well and care for herself at home; and that claimant was discharged from the hospital on July 3, 2008 (Claimant Exhibit A, pages 9 and 10).

(b) SHRT report dated January 6, 2009 states the claimant's impairment does not meet/equal Social Security Listings 3.01 and 6.01 (Medical Packet, page 76)

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.

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. If we can find that you are disabled or not disabled at any point in the review, we do not review further. 20 CFR 416.920(a). 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 by a preponderance of the medical evidence that she has established Medicaid disability, as defined above. PEM 260.

Step 1 has not been established.

Step 2 has not been established completely. This step determines whether the claimant, on date of application, had a severe 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 severity---any ambiguities are determined in the claimant's favor.

The above medicals establish that the claimant is significantly limited in performing basic physical work activities, as defined above, after her surgery in 2008, and support her disabling symptoms/complaints stated above.

Then, the remaining question is whether, on date of application, the duration requirement was established. The medicals above do not establish this requirement. Therefore, the severity/duration requirement has not been established.

Step 3 has not been established. This step determines whether the claimant, on date of application, meets/equals a Social Security listed impairment(s), and the duration requirement. Claimant introduced no medical evidence regarding any Social Security listings. And SHRT determined the claimant not disabled under the Social Security listings mentioned above.

Step 4 has not been established. This step determines whether the claimant, on date of application, was without a residual functional capacity for any of her past jobs during the last 15 years, despite a severe impairment. 20 CFR 416.920(e).

The medicals stated above do not establish the claimant's inability to perform any of her past work, as stated above, for the required duration mentioned above under Step 2.

Step 5 has not been established. 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 medicals stated above do not establish the claimant's inability to perform sedentary type work, as defined above for the required duration mentioned above under Step 2.

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 considered disabled. Medical-Vocational Rule 201.27.

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 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 7, 2009

Date Mailed: July 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

WAS/cv

cc:

