

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: 2009-6780
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 2, 2009
Wayne 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 April 2, 2009.

ISSUE

Was mental/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 20, 2008 was denied on October 2, 2008 per PEM 260.
- (2) Vocational factors: age 56, 12th grade education with one year of college (Medical Packet, page 86), and past unskilled work on an assembly line taking off parts and dipping them in chrome solution and thereafter returning the parts to the assembly line; unskilled

laundromat working washing clothes and drying them; unskilled church custodian performing cleaning operations; semi-skilled security guard for 10 years (Medical Packet, page 86).

(3) Disabling symptoms/complaints: able to perform basic mental work activities as defined below with difficulty because of poor memory; unable to perform basic physical work activities as defined below because of shortness of breath and poor balance after walking two blocks, becomes “wobbly” after standing 10 to 15 minutes, needs a cane for ambulation, tiredness, and swelling of feet/ankle.

(4) Substantial gainful work: Last worked five years ago.

(5) Medical reports of examinations:

[Mental Impairment]

(a) February 29, 2008 states the claimant’s included diagnosis of cocaine abuse (Medical Packet, page 49).

(b) March 2, 2008 states the claimant’s included diagnoses of cocaine abuse (Medical Packet, page 25).

(c) March 15, 2008 states the claimant’s included diagnoses of substance abuse (Medical Packet, page 81).

(d) August 19, 2008 states the claimant has no mental limitations (Medical Packet, page 4).

(e) October 21, 2008 states the claimant has a GAF of 60 (Medical Packet, page 88).

(6) Medical reports of examinations:

[Physical Impairment]

(f) August 19, 2008 states the claimant’s condition is stable; that he can lift/carry occasionally less than 10 pounds; that he needs a cane for ambulation; and that he can use his left upper extremity on a repetitive basis (Medical Packet, page 4).

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 he has established Medicaid disability, as defined above. PEM 260.

Step 1 has been established.

Step 2 has not been established completely. 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 severity---any ambiguities are determined in the claimant's favor.

The above medicals establish a severe physical impairment, but not a severe mental impairment. The above medicals establish a GAF of 60. This is considered a person with a non-severe mental impairment. Diagnostic and Statistical Manual of Mental Disorders (4th Edition-Revised). The above medicals do not establish the duration requirement for a severe physical impairment. 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 listing(s).

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 his 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 his past work, as stated above.

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.

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 201.07.

Substance Abuse

The claimant testified that he has not been a cocaine abuser since eight to nine years ago. To the contrary, the above medicals show that he was a cocaine abuser before and after his Medicaid application.

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. 20 CFR 416.935.

The claimant offered no medical proof that he meets the disability factors independent of his substance abuse (cocaine).

Therefore, this Administrative Law Judge is not persuaded that mental/physical disability was medically established.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that 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 13, 2009


Date Mailed: July 14, 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:

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