

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: 2009-6908
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 5, 2009
Tuscola 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 5, 2009.

The claimant waived the SHRT's recommendation for additional medical testing.

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 September 11, 2008, the claimant applied for Medicaid/SDA and was denied on November 3, 2008, per PEM 260/261.

(2) Claimant's vocational factors are: age 29, some college, and past unskilled/semiskilled waitressing and bartending; unskilled factory work as a press operator; skilled work in retail sales; unskilled/semiskilled cashier.

(3) Claimant's disabling symptoms/complaints are: unable to perform basic mental work activities because of difficulty following instructions, memory, frustration, and concentration; not able to perform all basic work activities as defined above because of ankles swelling after walking, burning sensation, swelling, shooting pain in arm up through elbows from repetitive hand use; hands swell at night while sleeping; chronic low back pain from lifting weight of 15 to 20 pounds; chronic tiredness; cannot perform any lifting activities because of current pregnancy.

(4) The claimant has not performed substantial gainful work since November 8, when she was laid off from seasonal work.

[MENTAL IMPAIRMENT]

(5) Medical exam on [REDACTED] states the claimant's GAF of 45 (Medical Packet, page 74).

(6) Medical exam on [REDACTED] states the claimant is "moderately limited," in ability to maintain attention and concentration for extended periods, and to accept instructions and respond appropriately to criticism from supervisors; "not significantly limited" inability to understand and remember detailed instructions, to make simple work-related decisions, to complete a normal work date and work week without interruptions from psychological based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, and to set realistic goals or make plans independently; and "no evidence of

limitations” inability to remember locations and work-like procedures, to understand and remember one or two-step instructions, to carry out simple, one of two-step instructions, to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, to sustain an ordinary routine without supervision, to work in coordination with or proximity to others without being distracted by them, to interact appropriately with the general public, to ask simple questions and request assistance, to maintain social appropriate behavior and to adhere to basic standards of neatness and cleanliness, to respond appropriately to change in work setting, to be aware of normal hazards and take appropriate precautions, and to travel in unfamiliar places or use public transportation (Medical Packet, pages 75 to 76).

(7) SHRT report dated [REDACTED] states the claimant’s impairment(s) does not meet/equal Social Security Listing 12.04 (Medical Packet, page 216).

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).

"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 her mental/physical impairment(s) meet 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 her Medicaid/SDA application, she meets the Step 1 eligibility test per 20 CFR 416.920(b). Therefore, the analysis continues to the next step.

STEP #2

This step determines whether the claimant on date of application, had severe/physical impairment as defined above, which had lasted or was expected to last for a continuous period of

at least 12 months (90 days for SDA). 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.

Claimant’s claim that her disabling symptom/complaint, on date of application, significantly limited her from performing basic work activities as defined above, **alone**, cannot establish a severe impairment, as defined above. It must be established by the objective medical evidence in the record. It was not.

Mental Impairment

The medicals mentioned above in August 2008 state the claimant’s GAF score of 45. This is considered a person with a severe mental impairment and difficulty with job-functioning Diagnostic and Statistical Manual of Mental Disorders (4th Edition, Revised). But, in the medicals mentioned above in September 2008, the objective medical evidence does not support a severe mental impairment. The claimant was either “moderately limited,” “not significantly limited” or “no evidence of limitations” memory.

Physical Impairment

The objective medical evidence in the record does not address the claimant’s physical work limitations in order to determine if she meets the severity test, as defined above.

Let’s assume on date of application, a severe mental/physical impairment in combination 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 (90 days for SDA). The objective medical evidence of record does not establish this duration requirement. Before you can be determined disabled, the severity/duration must be established by the objective medical evidence. 20 CFR 416.920(a). Therefore, Step 2 has not been established.

The medical evidence stated above does support a severe mental impairment.

STEP #3

This step determines whether the claimant, on date of application, meets/equals a Social Security Listing, and the duration requirement. The medical evidence stated above does not establish a Social Security Listing, and the duration requirement. SHRT determined the claimant ineligible under Listing 12.04. The claimant did not cite any Listings in support of any disability under Step 3. 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 her past work during the last 15 years despite a severe impairment per 20 CFR 416.920(e).

The medical evidence stated above does not establish the claimant's inability to perform any of her past work, as stated above. 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 per 20 CFR 416.920(f).

The medical evidence stated above does not establish the claimant's physical inability to perform any other work. To the contrary, the objective medical evidence does not address the claimant's physical impairment(s). Therefore, Step 5 has not been established.

Therefore, this ALJ is not persuaded that disability has not 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: March 10, 2009

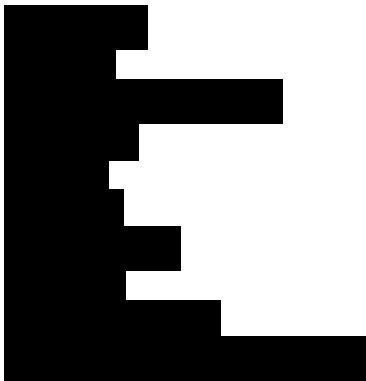
Date Mailed: March 10, 2009

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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