

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: 2009-8407
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 1, 2009
Shiawassee 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 1, 2009.

The D & O was delayed at the claimant's request for a second SHRT review of additional medical reports presented at the hearing (Claimant Exhibit A). After SHRT's second non-disability determination, the ALJ made the final decision below.

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/SDA application on October 2, 2008 was denied on November 24, 2008 per PEM 260/261.

(2) Vocational factors: age 44, high school education, and past semi-skilled work as a cement truck driver.

(3) Disabling symptoms/complaints: cannot perform basic mental work activities as defined below because of short-term memory loss, difficulty communicating and thinking, and anxiety; unable to perform basic physical work activities as defined below because of poor balance, tendency to drag left foot, and lifting/carrying limited to 20 pounds.

(4) Substantial gainful work: last worked on September 24, 2008, when he had a seizure.

(5) Medical reports of examinations:

[Mental Impairment]

- (a) September 29, 2008 states the claimant is alert and oriented x3; that his speech is fluent and coherent; that he responds to questions and commands appropriately; that he is aware of current events and past history and has a full vocabulary; and that recent and remote memories are intact (Medical Packet, page 17).
- (b) October 21, 2008 states the claimant is limited in memory and sustained concentration (Medical Packet, page 4).
- (c) October 27, 2008 states the claimant's speech is fluent and coherent; that he responds to questions and commands appropriately; that he is off work for six months until no more seizures occur and then he can return to driving; and that he may not be able to return to his previous employment because his truck driving employer may not allow him to return to work (Medical Packet, page 13).

[Physical Impairment]

- (d) September 29, 2008 states the claimant has a full range of extraocular muscles; that facial sensation is intact; that sternocleidomastoid muscles are 5/5 bilaterally; that motor exam reveals 5/5 muscle strength in the bilateral biceps, triceps, deltoids, wrists extensors and intrinsic hand muscles; that there is 5/5 muscle strength in the bilateral hip flexors, hamstrings, quadriceps, gastrocnemius and tibialis anterior muscles; that cerebellar exam revealed finger-nose-finger,

rapid alternating movements and heel-to-shin to be appropriate; and that there is no pronator drift noted (Medical Packet, page 17).

- (e) October 2, 2008 states the claimant cannot perform his usual job, but can perform other work with limitations based on his seizure disorder (Medical Packet, page 5).
- (f) October 21, 2008 states the claimant is solely improving; that out of an 8-hour workday he can stand and/or walk at least 2 hours and sit less than 6 hours; that he can lift/carry frequently 20 pounds and occasionally 25 pounds; that he needs no assistive device for ambulation; and that he can use his extremities on a repetitive basis (Medical Packet, page 4).
- (g) January 9, 2009 SHRT report states the claimant's impairments do not meet/equal a Social Security listing (Medical Packet, page 21).
- (h) March 20, 2009 states the claimant has a generalized seizure disorder; that medications help control his seizures; that he is not currently considered seizure-free; that he cannot operate a motor vehicle until he is seizure-free for at least six months; and that he cannot do his job as a truck driver (Claimant Exhibit A, page 2).

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).

Note: 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. 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/SDA disability, as defined above. PEM 260/261.

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 (90 days for SDA). 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 on September 24, 2008 in performing basic mental/physical work activities, as defined above, and support his disabling symptoms/complaints, stated above, but not the duration requirement.

The remaining question is whether, on date of application, the duration requirement was established.

The above medicals on October 2, 2008 state the claimant does not have the residual functional capacity for his usual job (truck driver), but has the residual functional capacity for other work with limitations based on his seizure disorder. Due to claimant's history of seizures, he should probably avoid working around dangerous heights and machinery until he is seizure free. Therefore, the 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). And SHRT determined the claimant not disabled under any Social Security Listings.

Step 4 has 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 establish the claimant's inability to perform 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 201.27/201.28.

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 mental/physical 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: July 10, 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

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