

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

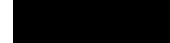
Reg. No: 2009-9989

Issue No: 2009

Case No:



Load No:



Hearing Date:

March 24, 2009

Monroe 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 March 24, 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 B), and recommended by SHRT and received on March 24, 2009 (Claimant Exhibit A). After SHRT's second non-disability 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:

2009-9989/was

(1) On October 6, 2006, the claimant applied for Medicaid and was denied on October 27, 2008 per PEM 260.

(2) Claimant's vocational factors are: age 54, 12th grade education, and past unskilled work as an assembly line worker requiring the lifting/carrying of up to 40 pound parts in an automobile factory.

(3) Claimant's disabling symptoms/complaints are: shortness of breath after walking 200 feet.

(4) Claimant has not performed substantial gainful work since December 2007, when he was fired from his job.

Physical Impairment Only

(5) Medical exam on October 13, 2008 states the claimant can use his upper extremities on a repetitive basis, except for reaching and pushing/pulling activities (Medical Packet, page 6).

(6) SHRT report dated January 30, 2009 states the claimant's impairment(s) do not meet/equal Social Security Listings of 11.04, 9.09, or 12.04 (Medical Packet, page 50).

(7) Medical exam on February 12, 2009 states the claimant can lift/carry occasionally up to 10 pounds; that at one time without interruption he can sit 2 minutes, stand 20 minutes and walk 20 minutes; that he requires the use of a cane to ambulate; that without a cane he can use his free hand to carry small objects; that he can use his right/left hand occasionally to reach overhead/all others, handling, fingering, feeling and pushing/pulling activities; that he can occasionally operate right/left foot controls; that he can occasionally climb stairs, balance, and stoop; that he is able to occasionally operate a motor vehicle; that he cannot walk a block at a reasonable pace on rough or uneven surfaces (Claimant Exhibit B, pages 1-6).

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. 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 physical impairment(s) meets the department's definition of disability for Medicaid purposes. PEM 260.

Step 1

Because the claimant was not performing substantial gainful work on the date of his Medicaid 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 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 objective medical evidence stated above supports the claimant's severe/duration requirement, as defined above. Step 2 has been established.

Step 3

This step determines whether the claimant, on date of application, meets/equals a Social Security listing, and the duration requirement.

SHRT determined the claimant's non-disability under the listings stated above. No listings were cited by the claimant specifically addressing any listings in his submitted medical reports. 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 his past work during the last 15 years, despite a severe impairment. 20 CFR 416.920(e).

The medical evidence stated above establishes the claimant's inability to perform any of his past work, as stated above, because of the claimant's limited lifting/carrying of weight. Step 4 has 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. 20 CFR 416.920(f).

The medical evidence stated above does 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 severely medically determinable physical impairment(s), and the claimant's vocational

2009-9989/was

factors stated above are disabled under this step. Medical-Vocational Rule 201.12. Step 5 has been established.

Therefore, this Administrative Law Judge is 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 medically established.

Accordingly, Medical denial is REVERSED.

Medical review suggested in March 2010.

/s/

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

Date Signed: June 23, 2009

Date Mailed: June 24, 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/cv

2009-9989/was

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