

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201054882
Issue No: [REDACTED]
Case No: [REDACTED]
Hearing Date:
February 1, 2011
Macomb 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on February 1, 2011. The claimant appeared and testified.

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 a material fact:

- (1) Notice of case action: MA application on July 6, 2010 denied August 30, 2010 based on non-disability per PEM 260 with hearing request on August 30, 2010.
- (2) Claimant was fired from her last employment on January 28, 2010 because of working with restricted limitations of lifting/carrying up to 5 pounds, but could return if work restrictions removed.
- (3) Claimant has performed semiskilled light type factory work the lightest being the cleaning and spraying of parts weighing 1-2 pounds for the last 6 months of her employment; and worked as a nurses aide.
- (4) Claimant's disabling complaints are: pain in back, neck, right arm, carpel tunnel syndrome in right arm, and limited to lifting/carrying up to 5 pounds.
- (5) Medical Reports:
 - A. Medical report dated January 28, 2010, states that the claimant is doing horrible; that she has significant back pain; that she has significant radicular pain in arms; that there is a disc-herniation at C5-C6; (Medical Packet. Page 89).

- B. Medical report dated March 10, 2010, states the claimant feels great; that her right arm pain is gone; that she still has just a little bit of residual numbness but that it is improving; that incision looks good; that range of motion is full; that strength is good and sensation is intact (Medical Packet, Page 21).
- C. Medical report dated May 19, 2010, states that the claimants arm pain feels great; that it is gone; that she still has just a little bit of residual numbness in right hand; that it is getting better; that she does have posterior neck pain particularly worse if she looks down; that her incision looks good; that neurologically she is intact (Medical Packet, Page 94).
- D. Medical exam dated July 14, 2010, states that the claimant is really not doing very well; that her neck is not necessarily painful but she feels like if she leans down and turns her neck she is going to vomit; that she does not really have ridiculer pain; that she still has some mild pain and there is numbness and tingling that has still not resolved; that her incisions look good; that her range of motion is limited by just a little bit of tightness when turning to the left; that her muscle strength is intact; that sensation subjectively is mildly decreased throughout the right hand (Medical Packet, Page 95).
- E. Medical report dated July 14, 2010, states that the claimants condition is improving that she is limited to lifting/carrying occasionally less then 10 pounds; that she is limited to standing and/or walking less then 2 hours in an 8 hour day and sitting less then 6 hours in an 8 hour day; that she does not require and assisted device for ambulation; that she is able to use her upper extremities for simple grasping and fine manipulating, in both her lower extremities on a repetitive basis (Medical Packet, Page 113).
- F. SHRT report dated October 1, 2010, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 133).

(6) Claimant is 48 with a high school education and semiskilled work history.

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).

The 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.

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).

At Step 1, the claimant is not engaged in substantial gainful activity (SGA) (see Fact #2) and, therefore, is not disqualified from receiving disability at this Step.

At Step 2, the undisputed medical reports above (Fact #5 A-E) does not establish the claimant's severe physical impairment for the one year duration requirement as defined below based on the de minimus standard.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have

a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

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).

The above medical reports range from January 28, 2010 before MA application (July 6, 2010) and thereafter, ending July 14, 2010, is approximately a 5 ½ month period (less than the required duration of 12 months).

The information in the above medical reports is mixed and inconsistent. The report in January 2010 indicates the claimant has a significant back pain problem and doing horrible. This would indicate a severe physical impairment based on the de minimus standard. The above report in March 2010 indicates a significant recovery and that the claimant feels great. This would indicate a non-severe impairment.

The report in May 2010 would indicate a significant improvement; that claimant's pain is gone; and that she has a little bit of numbness in the right hand. This would indicate a non-severe physical impairment.

One of the reports in July 2010 indicates that the claimant is not doing very well; that she still has some mild pain and numbness that have not been resolved; that her range of motion is limited a little bit when turning to the left; and that her muscle strength is intact. This would indicate a severe physical impairment based on the de minimus standard.

The other report in July of 2010 shows a significant improvement to where the claimant can lift/carry occasionally up to 10 pounds. This now exceeds the claimants disabling complaint (see Fact #4) limiting her up to 5 pounds. This report indicates a non-severe physical impairment. The information in the two July reports above is inconsistent.

In summary, the medical reports establish a severe physical impairment in January, non-severe in March/May, and severe/non-severe in July. Therefore, a one year continuous severe impairment has not been established.

Therefore, disability is denied at this Step.

At Step 3, the undisputed medical report above (Fact #5 F) does not establish the claimant's physical impairments meet/equal a social security listing. Therefore, disability is not denied at this Step.

If disability had not been denied at Step 2, it would be denied at Step 4. At Step 4, the undisputed medical reports above (Facts #5A-E) do not establish the claimant's inability to perform her past work of light factory work cleaning and spraying parts weighing 1-2 pounds and work as a nurse's aide, despite her non-severe physical impairment, as already discussed and analyzed above under Step 2.

Claimant testified that she was significantly limited in January 2010 to lifting/carrying up to 5 pounds. The medical report in July 2010 states the claimant can lift/carry up to 10 pounds. Therefore, disability is denied at this Step.

If claimant had not already been denied disability at Steps 2 and 4, she would be denied at Step 5. At Step 5, the undisputed medical reports above (Facts 5A-E), as already discussed and analyzed above under Step 2, do not establish that the claimant has no RFC for other work in the national economy, despite her non-severe physical impairment.

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

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).

Claimant's testimony that she has no RFC, based on her disabling complaints above (Fact #4), is not supported by the objective medical evidence. The medical evidence above (see Facts #5A-E) again, and as already discussed above under Steps 2 and 4, does not establish the claimant's inability for her past semiskilled work of cleaning and spraying 1-2 pound parts in a factory setting. When considering only the objective medical evidence of record, claimant would be able to perform at least sedentary work activities. At this level, considering the claimant's vocational profile (younger individual, age 48, high school education, and semiskilled work experience), she is not considered disabled under Vocational Rule 201.21. Therefore, claimant is disqualified from receiving disability at this Step.

Therefore, the claimant has not established disability, as defined above, based on the preponderance of the medical evidence or record 20 CFR 416.912 (a).

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, MA denial is UPHELD.

/s/ _____
William Sundquist
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: April 18, 2011

Date Mailed: April 20, 2011

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 [REDACTED]

cc: [REDACTED]