

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201112614
Issue No: 2009
Case No: [REDACTED]
Hearing Date: April 5, 2011
Kent 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 April 5, 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) Claimant is currently unemployed.
- (2) On December 24, 2009, the Claimant was last laid off from her job and started receiving unemployment compensation benefits (UCB) and is still on an extension currently.
- (3) On August 27, 2010, the Claimant applied for Medicaid while receiving UCB and was denied on November 22, 2010, per BEM 260 with a hearing request on December 29, 2010.
- (4) Claimants vocational factors are: age 52, 2 years of college with a business major, and past semi-skilled/skilled sedentary work experience in

retail sales, fashion department of Meijer's Thrifty Acres, assistant manager at Subway Sandwich, massage therapist, and mortgage broker.

- (5) Claimant's disabling complaints are: bipolar disorder, low back pain, mini stroke and hypertension; Claimant admits she has the current functional capacity to do her past jobs at Subway and her retail sales.
- (6) Medical exam on [REDACTED], states the Claimant is exquisitely tender to palpitation at the thoracolumbar junction, as well as the lumbosacral spine; that flexion to her knees is provocative with back pain; that extension is mildly provocative; that straight leg raises are provocative of back pain only; and that she has 5/5 strength in TA, quado, and hip flexors (Medical Packet, Page 98).
- (7) Medical exam on [REDACTED], states a GAF score of 50 for the Claimant (Medical Packet, Page 40).
- (8) Medical exam on [REDACTED], states that the Claimant's diagnosis of hypertension (Medical Packet, Page 31).
- (9) Medical exam on [REDACTED], states the Claimant was alert and in no acute distress; that back was non-tender, normal alignment, and no step-offs; that musculoskeletal was of normal range of motion and strength; and psychiatrically she was cooperative, appropriate mood and affect, and normal judgment (Medical Packet, Page 30).
- (10) Medical exam on [REDACTED], states the Claimant had no musculoskeletal symptoms of back pain nor muscle pain; and that she had no psychiatric symptoms of depression (Medical Packet, Page 28).
- (11) Medical exam on [REDACTED], states the Claimant was alert and oriented times 3; that cranial nerves are intact; that she has equal strength and sensation in all extremities; that she has normal finger-to-nose and heel-to-shin test (Medical Packet, Page 3).
- (12) SHRT report dated January 27, 2011, states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 215).

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 currently engaged in substantial gainful activity. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record establishes the Claimant's severe mental/physical impairment in combination, as defined below.

...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.

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).

Therefore, disability is not denied at this step.

At Step 3, the objective medical evidence does not establish the Claimants impairments meet/equal a Social Security listing.

At Step 4, the Claimant admitted that she has the ability to do her past jobs at Subway and in retail sales on a part-time basis, but not 40 hours a week.

Substantial work activity involves doing significant physical or mental activities. Your work maybe substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before. 20 CFR 416.972(a). So, full-time work of 40 hours is not the test in disability determinations.

Therefore, disability is denied at Step 4.

At Step 5, the objective medical evidence record does not establish that the Claimant has no residual functional capacity (RFC) for other work in the national economy, despite her severe 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).

Claimants disabling complaints that she has no RFC for any work is not supported by the objective medical evidence of record. She testified that she has the RFC to lift 5 pounds frequently and 10 pounds occasionally; that she can stand for 10 hours and sit for 2 hours so long as she changes body positions. When considering only the objective medical evidence, the Claimant would be able to perform, at least, sedentary type work, as defined above. At this level, considering the Claimants vocational profile (closely approaching advanced age, 52, 2 years of college, and semi-skilled/skilled work experience) she is not considered disabled under Vocational Rule 201.15. Therefore, disability is denied Step 5.

In addition, the Claimant received unemployment compensation benefits, before, during, and after the application, and currently. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they also must meet certain legal requirements which include being physically and mentally able to work, be available for and seeking work, and filing a weekly claim for benefits on a timely basis. This ALJ finds that the Claimant has not established that she

has a severe impairment or combination of impairments which had lasted or will last the durational requirement of 12 months or more or have kept her from working for a period of 12 months or more.

Therefore, disability as defined above has not been established by the necessary competent, material, and substantial evidence on the whole record.

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 denial is UPHELD.

/s/

William Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 6, 2011

Date Mailed: June 7, 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/ar

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