

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

IN THE MATTER OF:

[REDACTED]  
[REDACTED]  
[REDACTED]

Reg. No. 2011-19472  
Issue No. 2009  
Case No. [REDACTED]  
Hearing Date: July 26, 2011  
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 the claimant's request for a hearing. After due notice, an in person hearing was held on July 26, 2011.

Medical reports (Claimant Exhibit A) submitted after the hearing for a second SHRT review delayed the D&O below.

**ISSUE**

Was a severe mental/physical impairment expected to last for a **continuous** one year duration 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. Claimant has not worked since December 2008.
2. In December 2008, claimant was laid off from her last employment; thereafter she became an unemployment compensation benefits recipient with exhaustion in December 2009.
3. On June 29, 2009, claimant alleges that she became unable to do any past work or any other work due to severe anemia due to iron malabsorption, shortness of breath, muscle weakness, possible kidney problems, depression and anxiety, and easily fatigued and weak feet.

4. On June 29, 2009, the claimant applied for Medicaid (and three months retro), was denied on October 13, 2010 per BEM 260, and requested a hearing on January 25, 2011.
5. Claimant's vocational factors are: age 53, 12<sup>th</sup> grade education, and past work history as an unskilled administration/clerical worker and print shop worker, and skilled real estate salesperson.
6. Medical exam on March 9, 2009 the claimant states that since her last visit she is feeling better; that currently, she looks like she is doing well; and that she will continue her IV iron every three weeks (Medical Packet, Exhibit 2, page 144).
7. Medical exam on September 1, 2010 states the claimant's GAF score of 63 (Medical Packet, Exhibit 2, page 113).
8. Medical exam on September 9, 2010 states the claimant admits she has no problems standing; that she can walk about 100 yards or walk around a store; that she can still lift upwards to 40 pounds; that she has been a real estate secretary; that her immediate, recent and remote memory is intact with normal concentration; that her insight and judgment are both appropriate; that there is no evidence of joint laxity, crepitation or effusion; that grip strength is diminished bilaterally with 50% grip remaining; that dexterity is mildly impaired bilaterally; that she could open clothing, open a door; that she had mild difficulty getting on and off the examination table, mild difficulty heel to toe walking, was unable to walk on toes, mild difficulty swallowing, and was unable to hop; that her lumbar spine is straightened; that straight leg raising is negative; that range of motion is normal for the cervical spine, dorsal lumbar spine, shoulders, elbows, hips, knees, ankles, wrists, and hands-fingers; that cranial nerves are intact; that motor strength and tone are normal; that sensory is intact to light touch and pinprick; that Romberg testing is negative; that she walks with a normal gait without the use of an assistive device; that she did not appear pale or fatigued today; that she does do iron transfusions every two weeks and this appears to be keeping her stable; that she was not able to hop or walk on her toes due to hammertoe formation on the right foot; that her gait was stable however; that she has the ability to sit, stand, bend, stoop, carry, push, pull, button clothes, tie shoes, dress-undress, dial telephone, open door, make a fist, pick up coin, pick up pencil, write, squat, and arise from squatting, get on and off the examining table, climb stairs; that she is able to heel and toe walk in tandem; that her gait is stable and within normal limits; that she does not need a walking aid; and that grip strength is 5/5 (Medical Packet, Exhibit 2, pages 4 to 10).
9. Medical exam on December 28, 2010 states that pain in joint involving ankle and foot is in good control and is not having any side effects to the drug and is much more functional (Claimant Exhibit A, page 6).

10. Medical exam on April 9, 2011 states the claimant is in no acute distress; that she is well developed and well nourished; and that she is alert; and that she has normal strength, grossly normal exam, normal coordination and normal sensation (Claimant Exhibit A, page 92).

### **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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

When determining disability, the federal regulations are used as a guideline and 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 evidence of record establishes that claimant has not been engaged in substantial gainful work since December 2008. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record does not establish that the claimant is significantly limited in performing basic mental/physical work activities, as defined below, for the required duration stated below of one **continuous** year.

...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 claimant has the burden of proof to establish that she has a severely restricted mental or physical impairment that has lasted or can be expected to last for the duration of at least one **continuous** year. There is insufficient objective medical evidence in the record that claimant suffers a severely restricted mental or physical impairment for that required period.

The medical evidence of record establishes that the claimant had a GAF score of 63 in September 2010. This is considered a person with a nonsevere mental impairment with job functioning. DSM-IV (4<sup>th</sup> Edition-Revised)

Before, on and after date of application, the claimant was a UCB recipient.

In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially employed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that claimant has not established that she has a severe impairment or combination of impairments which have 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 is denied at Step 2.

If claimant had not been denied disability at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that she would meet a statutory listing in the Code of Federal Regulations. In order to qualify as disabled, a severe physical impairment for the required duration has to be first established under Step 2.

If claimant had not already been denied disability at Step 2, she would have to be denied again at Step 4 based upon her ability to perform her past work, despite her impairment. There is no evidence upon which this ALJ could base a finding that claimant is unable to perform work in which she has engaged in the past for the required one year duration. Therefore, disability would be denied again at this step.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has a residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

If claimant had not already been denied at Steps 2 and 4, she would be denied again at Step 5. At Step 5, the objective medical of record does not establish that the claimant is without a residual functional capacity for other work in the national economy for the required duration of one **continuous** year.

...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 has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do sedentary tasks, as defined above, if demanded of her even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe physical impairment or combination of impairments which prevent her from performing any level of work for a period of at least one **continuous** year. Therefore, disability is denied at Steps 2, 4 and 5.

Therefore, the claimant has not established disability as defined above, 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.

*William A. Sundquist*

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

Date Signed: November 9, 2011

Date Mailed: November 10, 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 mailing 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:

