

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

IN THE MATTER OF:



Reg. No: 201126698
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: May 17, 2011
Van Buren 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 May 17, 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 as material fact:

- (1) Claimant is currently unemployed.
- (2) In mid-2007 the claimant quit her job because of a back injury due to a car accident.
- (3) Claimant's vocational factors are: age 33, 10th grade education, and past semi-skilled work experience as a short order cook in a restaurant and restaurant waitress.
- (4) On January 16, 2011, the claimant applied for MA/SDA, was denied on March 16, 2011, per BEM 260/261, and requested a hearing on March 22, 2011.

- (5) Claimant's disability complaints are: bad back due to fracture from car accident with severe back, leg, and arm pain; flashbacks and severe depression (Medical Packet, pages 10 and 191).
- (6) Mental exams of the claimant were done by an [REDACTED], who stated the claimant's current condition was unremarkable.
- (7) Medical exam on [REDACTED], states the claimant has a small posterior C5-6 cervical disc herniation without significant impingement on the spinal canal; and that there is a normal cervical spinal cord and no fracture (Medical Packet, page 164).
- (8) Medical exam on [REDACTED], states the claimant has a mild compression fracture of L1 vertebra superior in plate with anterior wedging; that this is an old fracture with no bone edema; that lumbar vertebra have normal alignment; and that disc spaces are fairly normal (Medical Packet, page 162).
- (9) Medical exam on [REDACTED], states the claimant had a full range of motion of the musculoskeletal (Medical Packet, page 132).
- (10) Medical exam on [REDACTED], states claimant's affect, mood, judgment, insight, and memory are normal; and that joint inspection and palpitation was normal for range of motion, stability, strength, and tone (Medical Packet, page 138).
- (11) SHRT reported April 14, 2011, states the claimant's impairments do not meet/equal a Social Security listing (Medical Packet, page 191).

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).

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 evidence establishes that the claimant is not currently engaged in substantial activity. 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 work activities, as defined below, and for the required duration stated below. But, the evidence of record establishes a severe

physical impairment, as defined below, based on the *de minimus* standard for the required duration 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.

The mental reports were done by an MSW, LMSW. Acceptable mental evidentiary sources are: licensed MD's, DO's, or certified psychologists. 20 CFR 460.913. Therefore, no evidentiary weight can be given to the nonmedical professional.

Therefore, disability is not denied at this step based on the physical impairment.

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

At Step 4, the objective medical evidence does not establish the claimant's inability to do any of her past work as a short-order cook and a restaurant waitress. Therefore, disability is denied at this step.

At Step 5, the objective medical evidence does not establish that the claimant is without a Residual Functional Capacity (RFC) for other work in the national economy.

...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 disabling complaints about that she has no RFC for any work is not supported by the objective medical evidence of record. Her medical limitations fall within the definition of sedentary type work as defined above. Therefore, the claimant would be able to perform, at least, sedentary work. At this level, considering the claimant's vocational profile (younger individual, age 33, 10th grade education, and past semi-skilled work experience) she is not considered disabled under Vocational Rule 201.25. Therefore, disability is denied at steps 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, MA/SDA denial is UPHELD.

/s

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

Date Signed: June 3, 2011

Date Mailed: June 6, 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.

201126698/WAS

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

cc:

