

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201129222
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 21, 2011
Calhoun 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 Wednesday, April 4, 2012. Claimant appeared with her authorized representative, [REDACTED]

Medical reports (Claimant Exhibit A) submitted at the hearing for a second SHRT review delayed the decision and order below with the claimant's approval.

Continuance of the hearing requested by the claimant to obtain additional medical reports for a second SHRT review was denied for lack of good cause. MAR 400.915.

ISSUE

Was disability, as defined below, 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. On February 21, 2009, claimant applied for MA-P (and December retro), was denied on July 20, 2010 per BEM 260, and requested a hearing on December 8, 2010.
2. Claimant was age 48, with a GED, and past work experience as an unskilled restaurant waitress, semi-skilled sales clerk operating cash register, and skilled nurses aide and manufacturing conveyor-belt assembler.
3. In December 2008, claimant terminated his last job for health reasons.

4. On date of application, claimant alleges disability due to seizures, heart condition, hypertension, diabetes and bipolar disorder.
5. Medical exam on May 12, 2008, states the claimant's current GAF of 50 (Medical Packet, Page 213).
6. Medical exam on January 21, 2009, states the claimant has shortness of breath, cough, hemoptysis or wheezing; that he has no chest pains, pressure, discomfort, palpitations; that musculoskeletally he has no muscle or joint pain, weakness, stiffness, swelling or inflammation, restriction of motion, cramping or atrophy; that neurologically he has no difficulty in motor strength, gait, sensation, level of conscientiousness, memory, concentration, mood, affect or general thought processes; that he denies seizures, tremors, headaches, speech difficulties, dizziness or imbalance; that he has normal respiratory effort, normal to auscultation; that his cardiovascular has a regular rate and rhythm; that psychiatrically he has appropriate judgment and insight; that he is oriented to person, place and time; that he has normal and remote memory; and that mood and affect are appropriate (Medical Packet, Page 323).
7. Medical exam on February 5, 2009, states the claimant's condition is stable; and that he has no mental limitations (Medical Packet, Page 304).
8. Medical exam on February 12, 2009, states the claimant's examination of head, neck and face is unremarkable; that lung auscultation reveals no rales, rhonchi, wheezing or rubs (Medical Packet, Page 301).
9. Medical exam on March 6, 2009, states the claimant's cardiovascular exam is normal (Medical Packet, Page 303).
10. Medical exam on May 4, 2009, states the claimant is well-developed, well-nourished, and well-hydrated and in no acute distress; that he made a normal respiratory effort; that he has a regular heart rate and rhythm with no murmurs, gallops, rubs or abnormal heart sounds (Medical Packet, Page 341).
11. Medical exam on May 5, 2009, states the claimant has normal respiratory effort; that psychiatrically he is oriented to person, place and time; and that his mood and effect are appropriate (Medical Packet, Page 343).
12. Medical exam on May 18, 2009, states the claimant is well-developed, well-nourished, and well-hydrated and in no acute distress; that he had a normal respiratory effort; that he has regular heart rate and rhythm with no murmurs, gallops, rubs or abnormal heart sounds (Medical Packet, Page 345).

13. Medical exam on October 1, 2009, states the claimant's current GAF score of 50 (Medical Packet, Page 221).
14. SHRT report dated November 4, 2010, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 393).

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 (BAM), the Program Eligibility Manual (BEM) 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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 416.912(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).

At Step 1, disability is not denied. The evidence of record established that the claimant has not been engaged in substantial gainful work since December 2008.

At Step 2, disability is denied. The medical evidence of record does not establish a severe mental/physical impairment, on date of application, that had prevented the claimant from performing basic work activities, and had lasted or was expected to last for a one year continuous duration, as defined below.

Severe/Non-Severe Impairment

...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).

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 question for this Administrative Law Judge is whether or not the claimant's medically diagnosed disorders and disabling complaints are severe or non-severe, as defined above. Said in another way, do the claimant's medically diagnosed disorder and disabling complaints impair her slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

Most of reports of record are diagnostic and treatment reports, and do not provide medical assessments of claimant's work limitations/restrictions relative to inability to perform basic work activities, as defined above, nor his past work and his sedentary work activities, as defined above.

The medical evidence of record established a GAF score of 50 in May 2008 and October 2009. This is considered a borderline severe/non-severe mental impairment with job-functioning. DSM IV (4th edition-revised). In February 2009, the medical evidence of record established the claimant's stability with no mental limitations.

Therefore, disability meeting the duration requirement of one continuous year has not been established by the preponderance of the medical evidence of record.

If disability had not been denied at Step 2, the analysis would proceed to Step 3, where the medical evidence of record does not establish a severe impairment meeting/equaling a social security listed impairment and the duration requirement.

The listing of impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful

activities. Most of the listed impairments are permanent or expected to result in death, or specific statement of duration is made. For all others, the evidence must show the one year continuous duration. 20 CFR 416.925(a).

The claimant introduced no medical evidence of record by a treating, examining or non-examining physician addressing a social security listing(s). And to the contrary, the SHRT medical consultant addressed the matter and found insufficient medical evidence of disability under a social security listing.

If disability had not already been denied at Step 2, it would be denied at Step 4 where the medical evidence of record, on date of application, does not establish claimant's inability, despite his impairments, to perform any of his past work for the required one year **continuous** duration.

If disability had not already been denied at Step 2, it would be denied at Step 5 where the medical evidence of record, on date of application, does not establish the claimant's was without a residual functional capacity (RFC), despite his impairments, to perform any other work in the national economy for the required one year **continuous** duration.

...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).

The medical evidence of record, on date of application, does not establish that the claimant was without a RFC for less strenuous work than his past work, such as sedentary work, as defined above. Under the medical-vocational guidelines, a younger individual age 48, with GED, and unskilled/semi-skilled/skilled work history who is limited to sedentary work is not considered disabled.

Therefore, disability has not been established at Step 2 and also at Steps 4 and 5 by the 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 A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 6, 2012

Date Mailed: April 6, 2012

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/tb

cc:

