

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-43252
Issue No. 2009
Case No. [REDACTED]
Hearing Date: October 26, 2011
Mecosta 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 October 26, 2011.

ISSUE

Was severe mental/physical impairment that was 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 November 13, 2009.
2. On November 13, 2009, claimant was fired from her last employment; thereafter, she started working part-time as a home help services provider and became a UCB recipient with exhaustion on December 4, 2010.
3. In November 2009, claimant alleges that she became unable to do any past work and any other work due to fibromyalgia, fatigue, osteoporosis, a torn meniscus, irritable bowel syndrome, asthma, gastroesophageal reflux disease and depression.
4. On March 8, 2011, the claimant applied for Medicaid, was denied on May 26, 2011 per BEM 260, and requested a hearing on July 5, 2011.

5. Claimant's vocational factors are: age 53, high school plus, and past work history as a current unskilled/semi-skilled home help services provider, and past skilled clerical/administrative assistant to medical doctors.
6. Medical exam on February 3, 2010 states the claimant may return to work with the following restrictions: no squatting or climbing and sit down work only (Medical Packet, page 16).
7. Medical exam on March 19, 2010 states the claimant had a left knee medial meniscus tear and chondromalacia (Medical Packet, page 65).
8. Medical exam on March 29, 2010 states the claimant underwent left knee arthroscopy, partial medial meniscectomy; that she is actually doing pretty well; that she is walking without crutches; and that she has some mild to moderate swelling; and that the incisions were well-healed; and that she has a full extension to 100% of flexion; and that she is doing well (Medical Packet, page 69).
9. Medical exam on May 3, 2010 states the claimant may return to work with a sit down work only (Medical Packet, page 62).
10. Medical exam on May 3, 2010 states the claimant is doing satisfactory; that she continues to improve; that she is continuing on sedentary work (Medical Packet, page 68).
11. Medical exam on June 7, 2010 states the claimant continues to have swelling of the knees, discomfort, and difficulty doing longer walks; that she had been having significant improvements; and that she has good range of motion (Medical Packet, page 67).
12. Medical exam on June 7, 2010 states the claimant may return to her work with a sit down work only (Medical Packet, page 61).
13. Medical exam on July 19, 2010 states the claimant has no knee effusion; that she had full range of motion; that she had a mildly positive Stine's; and that she will not be able to do standing or walking for long periods of time (Medical Packet, page 66).
14. Medical exam on July 19, 2010 states the claimant may return to work with the following restrictions: no squatting and climbing; and no standing longer than six hours out of an eight-hour workday (Medical Packet, page 60).
15. Medical exam on June 31, 2011 states that the claimant cannot stand for more than six hours; that she cannot bend or squat and is unable to climb, jump or run (Medical Packet, page 77).

16. Medical exam on July 5, 2011 states the claimant's gait is within normal limits and strength is equal bilaterally (Medical Packet, page 76).
17. SHRT report dated August 17, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 79).

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 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, claimant is not engaged in substantial gainful activity and has not worked since November 2009. 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 restrictive mental/physical impairment that has lasted or can be expected to last for a duration of at least one **continuous** year. There is insufficient objective medical evidence in the record that claimant suffers a severely restrictive mental/physical impairment for that required period.

The medical reports of record are diagnostic/treatment/prognosis reports. There were no psychiatric/psychological assessment of record of claimant's work limitations/restrictions.

There are no assessments of record of the claimant's physical limitations/restrictions related to the claimant's disabling complaints. To the contrary, the evidence of record shows that she has the residual functional capacity for part-time work. The medical evidence of record shows that the claimant has been limited to sedentary work. Therefore, disability is denied at Step 2.

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

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

Date Signed: November 18, 2011

Date Mailed: November 18, 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:

