

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201149718
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: January 24, 2012
Lapeer 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 Tuesday, January 24, 2012. Claimant appeared with her authorized [REDACTED].

Medical reports (Claimant Exhibits A) submitted at the hearing for a second SHRT review delayed the decision and order below?

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 December 8, 2010, claimant applied for MA-P (and 3 months retro)/SDA, was denied on May 6, 2011 per BEM 260/261, and requested a hearing on July 29, 2011.
2. On date of application, claimant was age 50, had a 12 grade education, and past unskilled/semi-skilled work food preparation, traffic stop/go for road construction, cashier in a party store, and restaurant/bar cook.
3. In December 2009, claimant quit her last job.
4. Claimant alleges disability due to the following medical diagnosis and disabling complaints: diverticulitis and internal hemorrhoids.
5. Medical exam on December 4, 2010, states the claimant has normal ambulatory status and is able to move all extremities (Medical Packet, Page 81).

6. Medical exam on December 4, 2010, states the claimant has a full range of motion in all extremities; that cranial nerves II-XII are intact; and that she has no motor or sensory deficit (Medical Packet, Page 83).
7. Medical exam on December 4, 2010, states the claimant is well-developed and well-nourished and in no acute distress; and that there is no obvious musculoskeletal deformities noted (Medical Packet, Page 93).
8. Medical exam on March 14, 2011, states the claimant is well-developed, well-nourished, and appears to be in some discomfort; that she gets on and of examination table without any difficulties (Medical Packet, Pages 76-77).
9. Medical exam on May 13, 2011, states that the claimant is in no apparent distress; and that neurologically she is intact (Claimant Exhibit A, Pages 8-9).
10. Medical exam on May 13, 2011, states the claimant was admitted regarding her acute diverticulitis and discharge on May 26, 2011 in stable condition (Medical Packet, Page 53).
11. Medical exam on May 20, 2011, states the claimant did not appear to be in obvious distress; and that musculoskeletally there is no joint pain or effusion (Medical Packet, Pages 40-41).
12. Medical exam on June 1, 2011, states that the claimant had surgery removing 8 inches of her colon and placement of a colostomy bag (Claimant Exhibit A, Page 5).
13. From June 6, 2011 to June 18, 2011, claimant was hospitalized due to diverticulitis (Medical Packet, Page 17).
14. Medical exam on June 7, 2011, states the claimant tolerated the surgical procedure well and returned to the post-op recovery in satisfactory condition (Claimant Exhibit A, Page 15).
15. Medical exam on June 8, 2011, states the claimant's diverticulitis is improving (Claimant Exhibit A, Page 2).
16. Medical exam on August 24, 2011, states the claimant's cranial nerves II-XII are grossly intact; that motor strength is 5 out of 5 throughout upper and lower extremities; that sensation is intact to light touch or vibration; that gait is normal; and that history of diverticulitis status post partial colectomy June 2011 with reversible colostomy (Medical Packet, Page 136).
17. SHRT report dated October 10, 2011, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 131).

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 (BAM), the Program Eligibility Manual (BEM) 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 (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 claimant has the burden of proof to establish disability as defined above by the preponderance of the evidence of record and 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. Claimant has not been engaged in substantial gainful work since December 2009.

At Step 2, the medical evidence of record, on date of application, does not establish that the claimant had a severe physical impairment due to significant inability to perform basic work activities for one **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 in this case is whether the claimant's medically diagnosed disorders and disabling complaints, on date of application, significantly limit her ability to perform basic work activities, as defined above. Said in another way, do the diagnosed disorders impair the claimant slightly, mildly, moderately (non-severe, as defined above) or severely, as defined above?

Most of the medical reports of record are examination, diagnostic or treatment reports, and do not provide **medical assessments** of claimant's basic work limitations/restrictions regarding the performance of basic work activities.

This Administrative Law Judge finds a non-severe impairment, as defined above, has been established and not a severe impairment.

Severe physical impairment 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 a specific statement of duration is made. For all others, the evidence must show the one year **continuous** duration. 20 CFR 416.925(a).

Claimant introduced no medical evidence of record by a treating, examining, or non-examining physician addressing a social security listing(s). 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 her impairments, to perform any of her 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 was without a residual functional capacity (RFC), despite her 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 her past work, such as sedentary work, as defined above. Under the medical-vocational guidelines, an individual closely approaching advanced age of 50, high school education, and unskilled/semi-skilled work history who is limited to sedentary work is not considered disabled.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to

receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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/SDA denial is **UPHELD**.

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

Date Signed: April 25, 2012

Date Mailed: April 25, 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:



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