

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201151621
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 14, 2011
Ingham 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, December 14, 2011. Claimant appeared with her authorized representative, [REDACTED].

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

Continuance of the hearing at claimant's request to obtain additional medical reports was denied for lack of good cause per BAM 600.

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 April 25, 2011, claimant applied for MA-P (and March retro), was denied on June 15, 2011 per BEM 260, and requested a hearing on August 31, 2011.
2. Claimant was age 36, and had a 12 grade education, and work experience as an unskilled health care worker, janitor, and lunch aid assistant for a school.

3. On November 28, 2009, claimant terminated her last job due to mother's death, and became an unemployment compensation benefit (UCB) recipient with exhaustion on December 31, 2011.
4. In March 2010, claimant alleges disability due to degenerative disc disease, shortness of breath, anemia, learning disability and depression.
5. On March 7, 2011, states the claimant has a history as working as a custodian; that similar types of positions might be considered at this time; that the claimant demonstrated the social and psychologically functioning necessary to likely be successful in such positions; that she reported moderate symptoms of depression; that she has never been medicated for her mood; and that therapy might be a good source of support for her as she begins a new job (Medical Packet, Page 58).
6. Medical exam on March 20, 2011, states the claimant has no history of anxiety or depression; and that she is alert and oriented x3 and in no acute distress (Medical Packet, Page 11).
7. Medical exam on March 20, 2011, states the claimant has no anxiety or depression; and that she is alert and oriented x3 and in no acute distress (Medical Packet, Page 148).
8. Medical exam on April 14, 2011, states the claimant should never lift over 50 pounds; that sometimes she can continuously up to 2 hours or occasionally up to 6 hours stand, walk, lift up to 25 pounds, squat, crawl, kneel, reach over shoulder, grasping right-side/left-side pushing-pulling activities (Claimant's Exhibit A, Page 5).
9. SHRT report dated November 2, 2011, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 174).

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 460.912(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 November 28, 2009.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the claimant's significant inability to perform basic mental/physical work activities for the required 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 in all cases for the Administrative Law Judge 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 were examination, diagnostic and treatment reports, and did not provide medical assessment evaluations of claimant's basic work limitations/restrictions, as defined above.

Duration of Impairment

...[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 medical evidence of record does not establish a severe mental/physical impairment that had lasted or was expected to last for a one year **continuous** duration, on date of application.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. 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. Claimant did last work November 28, 2009, after which she became UCB recipient during and after her application.

Therefore, disability is denied at Step 2.

If disability had not been denied at Step 2, it would be denied at Step 3 where the evidence of record does not establish a severe impairment meeting/equaling a social security listing for the required duration.

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 activity. 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 a one year continuous duration. 20 CFR 460.925(a).

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 the 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, a younger individual, age 36, with a high school education, and unskilled work history who is limited to sedentary work is not considered disabled.

Therefore, disability has not been established at Step 2 and also Steps 4 and 5, as defined above, 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 3, 2012

Date Mailed: April 4, 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:

