

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201112951
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: March 31, 2011
Clare 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 March 31, 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 a material fact:

- (1) On [REDACTED], the claimant was fired from her last employment and qualified for unemployment compensation benefits until exhausted in 2008.
- (2) The claimant is currently unemployed.
- (3) On February 17, 2010, the claimant applied for MA/SDA and was denied on September 20, 2010 per BEM 260/261 with a hearing request on December 20, 2010.
- (4) Claimant's vocational factors are: Age 40, two years of college in accounting, and semiskilled/skilled work experience as an office manager, office assistant, and head cashier (Medical Packet, Pages 197 and 219).
- (5) Claimant's disabling complaints are: Degenerative disk and joint disease, chronic myofascial pain, fibromyalgia, cervical spondylosis, chronic fatigue, chronic pain, diabetes, depression and anxiety (Medical Packet, Page 219).

- (6) Medical report of exam done on [REDACTED], states the claimant is limited to lifting/carrying occasionally less than 10 pounds; that she can stand and/or walk less than two hours in an 8 hour work day and sit less than 6 hours; that she needs no assistive device for ambulation; that she cannot use her extremities on a repetitive basis; that her limitations are expected to last more than 90 days; and that she is mentally limited in comprehension, memory, sustain concentration, **following simple instructions** and social interactions (Medical Packet, Pages 112 and 113).
- (7) Medical report of exam done on [REDACTED], by a physician states the claimant in an 8 hour work day can sit about 4 hours and stand/walk about 2 hours and needs to include 15 minute periods of walking around during an 8 hour work day; that she can rarely lift/carry less than 10 pounds; that she cannot twist, bend, crouch/squat, climb ladders/stairs; that she is significantly limited in reaching, handling or fingering; that she has decreased ability to focus, concentrate and retain instructions; and that she suffers anxiety attacks when around people (Medical Packet, Pages 181-184).
- (8) Medical report of exam done on [REDACTED], by a physician who specializes in pain medicine states the claimant can frequently lift/carry less than 10 pounds; that she is limited to standing and/or walking less than 2 hours in an 8 hour work day; that she can sit less than 6 hours in an 8 hour work day; and that she is limited in pushing/pulling activities with her extremities (Medical Packet, Pages 169-170).
- (9) Medical report of exam done on [REDACTED], by Michigan Medical Consultants states the claimant had difficulty doing orthopedic maneuvers; that she was cooperative in answering questions and following commands; that her immediate, recent and remote memory is intact with normal concentration; that insight and judgment are appropriate; that there is no evidence of joint laxity, crepitation, or effusion; that grip strength remains intact; that dexterity is unimpaired; that claimant could tie and open a door; that she had no difficulty getting on and off of the examination table; mild difficulty heel and toe walking, mild difficulty performing a partial squat, and was unable to hop; that straight leg raising is negative; that there is no paravertebral muscle spasms; that range of motion is normal for cervical spine, dorsal lumbar spine, shoulders, elbows, hips, ankles, wrists, and hands-fingers; that cranial nerves are intact; that motor strength and tone are normal; and that she walks without use of an assistive device (Medical Packet, Pages 205-208).
- (10) SHRT report dated January 28, 2011, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 219).

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 facts above establish the claimant is not currently engaged in substantial gainful work activity. Therefore, disability is not denied at this Step.

At Step 2, the objective medical evidence above establishes a severe mental/physical impairment in combination, as defined below based on the de minimus standard.

...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).

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).

Therefore, disability is not denied at this step.

At Step 3, the objective medical evidence does not establish that the claimant's impairments meet/equal a social security listing. Therefore, disability is not denied at this Step.

At Step 4, the objective medical evidence establishes the claimant's inability to do her past administrative/accounting work based on her severe mental/physical impairment in combination. This past work was sedentary type work as defined below. Therefore, disability is not denied at this Step.

At Step 5, the burden of proof shifts to the DHS to establish that the claimant has a residual functional capacity for other work in the national economy, despite her severe mental/physical impairment in combination.

...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).

...When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work. 20 CFR 416.945(c).

...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 objective medical evidence is insufficient and does not establish the claimant has a residual functional capacity for sedentary work, as defined above, and as already discussed under Step 4 regarding her past sedentary work. Therefore, disability is not denied at this Step.

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, Page 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant does meet the disability criteria for state disability assistance benefits, also.

Therefore, disability as defined above, has been established by the preponderance of the medical evidence of record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that MA/SDA disability was medically established.

Accordingly, MA/SDA denial is REVERSED, and the DHS is ORDERED to medically review claimant's eligibility for MA-P/SDA in one year.

/s/

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

Date Signed: May 11, 2011

Date Mailed: May 11, 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.

201112951/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

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