

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

IN THE MATTER OF:



Reg. No: 20112056
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 15, 2010
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, a telephone hearing was held on December 15, 2010. 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) Claimant's MA application on August 20, 2010 was denied on September 30, 2010 based on non-disability per PEM 260 with a hearing request on September 30, 2010.
- (2) Claimant's vocational factors are: Age 47, 12th grade education, and past sedentary semiskilled work in a clerical/administrative service answering phone calls, typing, requiring a lot of sitting; unskilled work in an office answering phone calls and clean-up operations of the office requiring lifting and carrying up to 25 pounds; semiskilled work in a meat and produce department requiring the lifting/carrying up to 50 pounds; and skilled sedentary work as a cosmetologist license by the state.
- (3) Claimant has not worked since April 8, 2010.
- (4) Claimants disabling symptoms are: Ankylosing spondylitis disease, depression, fibromyalgia, migraines and vertigo.

- (5) On March 16, 2010, the medical report states the claimant may return to full duty on March 17, 2010 (Medical Packet, Page 253).
- (6) On March 26, 2010, the medical report states the claimant is alert and oriented x3 that attention span, recent and remote memory, fond of knowledge and language test are unremarkable (Medical Packet, Page 212).
- (7) On April 8, 2010, the medical report states the claimant may return to work full duty April 26, 2010 (Medical Packet, Page 417).
- (8) On April 23, 2010, the medical report states the claimant may not return to work effective April 23, 2010 with an estimated return of June 4, 2010 (Medical Packet, Page 185).
- (9) On June 4, 2010, the medical report states claimant may not return to work effective June 4, 2010 with an estimated return of October 14, 2010 (Medical Packet, Page 184).
- (10) On July 20, 2010, the medical report states the claimant may return to work with the following restrictions effective July 20, 2010: No lifting more than 25 pounds, no pushing or pulling more than 25 pounds, minimum use of stairs, no repetitive bending, twisting, or stooping, and no work in bright lighted areas due to triggering migraines, no more than 8 hour work day for 40 hours work a week, and that claimant's condition is not work related (Medical Packet, Page 258).
- (11) On August 2, 2010, the medical report states the claimant's extremities move in all 4 extremities; that he is alert and oriented; that mentation is intact; the speech is clear and fluent; that gait is normal; that patient has normal strength and muscle tone all four extremities; that strength is graded 5 out 5; and that sensation is intact; (Medical Packet, Page 260).
- (12) On October 20, 2010, the medical report states, that the claimant has good contact with reality; that he is cooperative and was not symptom enaggerator; that she is articulate and thoughts were organized, coherent and goal directed; that she had no pressure of speech, blocking or dysarthria; that she does not have any auditory or visual hallucinations or delusional themes; that affect was broad and normal; that she was well oriented, to person and place; that immediate memory was normal; that she could remember 2 of the 4 words after 3 minutes and 20 seconds; and stated a diagnosis of major depressive disorder, recurrent, severe without psychosis and a current GAF of 50 (Medical Packet, Pages 440-441).
- (13) SHRT report dated October 25, 2010, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 443).

- (14) Claimant admitted that she has the RFC for sedentary work.

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 (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).

The claimant has the burden of proof to establish that she is disabled, as defined above, by the preponderance of the medical evidence of record 20 CFR 416.912(c).

Claimant was not disqualified from receiving disability at Step 1, because she was not substantially gainfully employed at any time relevant to this matter. Therefore, the analysis continues to Step 2.

At Step 2, a de minimus standard is applied. Ruling any ambiguities in the claimant's favor, a severe impairment is established. Therefore, the analysis continues to Step 3.

At Step 3, the analysis considers whether an individual meets or equals one of the social security listings (20 CFR 416.920(d)). This ALJ agrees with SHRT that the claimant's impairment does not meet or equal a listing. Therefore, the analysis continues to Step 4.

At Step 4, the analysis considers whether an individual can do past work despite a severe impairment.

The claimant admitted that she can perform past sedentary work.

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 undisputed medical facts above do not establish the claimant's inability to perform her past sedentary work. To the contrary, the medical evidence establishes the claimant's functional capacity for sedentary work in spite of a severe impairment. Therefore, disability is denied at this Step.

Even though disability is already denied at Step 4, this ALJ will still analyze Step 5. At this Step, medical vocational guidelines have been developed and can be found in 20 CFR, Sub Part P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. Using Medical Vocational Rule 201.21 and 201.22 as a guideline, claimant would be considered not disabled. According to these rules, a younger individual of age 47, with a high school education and unskilled, semiskilled, and skilled work experience, limited to sedentary work, as defined above, is not disabled.

Therefore, the claimant has not established that she is disabled, as defined above, 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 disability was not medically established.

Accordingly, MA denial is UPHELD.

/s/ _____
William Sundquist
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: April 18, 2011

Date Mailed: April 20, 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 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 [REDACTED]

cc: [REDACTED]