

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

IN THE MATTER OF:



Reg. No: 201120866
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: May 26, 2011
Mason 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 May 26, 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 as material fact:

- (1) Claimant is currently unemployed.
- (2) On November 2, 2006, the claimant quit her job due to medical reasons.
- (3) Claimant's vocational factors are: age 29, high school or more education and past semi-skilled work as a certified nurse's assistant in a nursing home, semi-skilled casino card dealer, unskilled cashier, and unskilled fast food worker.
- (4) On May 13, 2010, the claimant applied for MA (3 months retro) /SDA, was denied on August 16, 2010, per BEM 260/261, and requested a hearing on November 5, 2010.

- (5) Claimant alleges disability primarily due to migraine headaches and secondarily, depression.
- (6) Medical exam on [REDACTED], states the claimant's migraine headaches are intractable (Medical Packet, page 33).
- (7) Medical exam on [REDACTED], states the claimant's migraine is no longer intractable (Medical Packet, page 32).
- (8) Medical exam on [REDACTED], states the claimant has an unremarkable MRI exam of the cervical spine (Medical Packet, page 50).
- (9) Medical exam [REDACTED], states the claimant complains of difficulty with concentration, headaches, and memory loss; that she denies poor balance, excessive daytime sleeping, dizziness, disturbances in coordination, numbness, falling down, tingling, visual disturbances, seizures, weakness, sensation of the room spinning, tremors, fainting, inability to speak, and brief paralysis; and that she was grossly intact with normal reflexes, coordination, muscle strength and tone (Medical Packet, page 29).
- (10) Medical exam on [REDACTED], states the claimant is well developed, well nourished, and in no acute distress; and that she was diagnosed with migraine headaches (Medical Packet, page 13).
- (11) Psychological exam on [REDACTED], states the claimant's GAF score of 55 (Medical Packet, page 9).
- (12) SHRT report dated March 10, 2011, states the claimant's impairments do not meet/equal a Social Security listing (Medical Packet, page 192).

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 evidence establishes that the claimant is not currently engaged in substantial gainful activity. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record establishes that the claimant is significantly limited in performing basic physical work activities, as defined below, based on the *de minimus* standard, and for the required duration stated below, except for the mental 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).

...[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).

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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 a psychological GAF score of 55. This is considered a non-serious impairment with occupational functioning. DSM IV (4th Edition-Revised). Anyway, claimant says her primary disabling impairment is physical.

Therefore, disability is not denied at this step due to a physical impairment.

At Step 3, the objective medical evidence does not establish that the claimant's impairments meet/equal as Social Security listing.

At Step 4 the objective medical evidence does not establish the claimant's inability to do any of her past work, despite her severe physical impairment. Her past work as a casino card dealer and cashier fall within her medical limitations. Therefore, disability is denied at this step.

At Step 5, the objective medical evidence does not establish the claimant is without a Residual Functional Capacity (RFC) for other work in the national economy.

...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).

Claimant's disabling complaints above that she has no RFC for any work is not supported by the objective medical evidence of record. Prior to August 9, the medical evidence of record shows that the claimant had intractable migraine headaches; and that in [REDACTED], they were no longer intractable. Her medical limitations fall within the definition of sedentary work as defined above. Therefore, the claimant would be able to perform, at least, sedentary type work. At this level, considering the claimant's vocational profile (younger individual, age 29, high school or more education, and past unskilled/semi-skilled work experience) she is not considered disabled under Vocational Rules 201.27 and 201.28. Therefore, disability is denied at steps 4 and 5.

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 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, 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, MA/SDA denial is UPHELD.

/s/

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

Date Signed: June 6, 2011

Date Mailed: June 7, 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.

201120866/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.

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