

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-21410
Issue No. 2009
Case No. [REDACTED]
Hearing Date: May 24, 2011
Genesee 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 May 24, 2011.

Medical reports (Claimant Exhibits A, B and C) submitted after the hearing for a second SHRT review delayed the D&O below.

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 has been working since January 2010, part-time, two and a half hours a day, Monday through Thursday.
2. In January 2010, claimant became a part-time employee.
3. Claimant alleges that she became unable to do any full-time work due to asthma, chronic obstructive pulmonary disease, appendicitis, gastroesophageal, reflux disease, hernia, deep vein thrombosis (DVT), papillary thyroid cancer, diabetes, hypertension, anemia, arthritis, muscle problems in the right ankle, fibromyalgia, migraines, back and neck pain, colitis, skin problems, and vision problems.

4. On June 29, 2010, claimant applied for Medicaid (three retro months), was denied on November 10, 2011 per BEM 260, and requested a hearing on February 4, 2011.
5. Claimant's vocational factors are: age 38, college education, and past semi-skilled work history as a tutor for children, and an MRI technician.
6. Medical exam on February 2, 2010 states the claimant's condition is stable; that she cannot lift/carry any weight; that she is able to stand and/or walk less than two hours; that she needs no assistive device for ambulation; and that she has no mental limitations (Medical Packet, page 285).
7. Medical exam on February 2, 2010 states the claimant can work at her usual occupations; and that she can work at any job with limitations of lifting (Medical Packet, page 83).
8. DPM exam on February 15, 2010 states the claimant's diagnosis is severe compression of Posterior Tibial nerve and radiculopathy of the L5 and S1; and that due to pain, claimant is unable to work (Medical Packet, page 258).
9. Medical exam on March 25, 2010 states the claimant has the ability to sit, stand, carry, button, tie his shoes, dial the telephone, open door, make a fist, pick up a coin, pick up pencil, write, squat and arise from squatting, get on and off examining table, climb stairs; and that she can walk in tandem; and that gait is stable and within normal limits; that she does not need a walking aide (Medical Packet, pages 254 and 255).
10. Medical exam on March 25, 2010 states the claimant is oriented x3; that she has normal reflexes; that cranial nerves are intact; that mood and affect are normal; and that she has some restrictions because of her hernia in the side groin (Medical Packet, page 250).
11. Medical exam on May 11, 2010 states the claimant is ambulatory with limping due to casting and therapeutic boot on right foot, and in no apparent distress (Medical Packet, page 316).
12. Medical exam on June 8, 2010 states the claimant is ambulatory (Medical Packet, page 314).
13. Medical exam on June 18, 2010 states the claimant is in no acute distress, well hydrated and well nourished. That conjunctives lids and selerae are normal; and that cranial nerves, motor system and sensory system are within normal limits (Medical Packet, page 31).
14. Medical exam on June 21, 2010 states the claimant is in no acute distress (Medical Packet, page 310).

15. Medical exam on July 9, 2010 states the claimant is ambulatory, alert and oriented x3, and not in apparent distress (Medical Packet, page 308).
16. Medical exam on July 14, 2010 states the claimant's physical exam was negative (Medical Packet, page 93).
17. Medical exam on August 3, 2010 states the claimant needs an ankle splint. That she is able to lift/carry occasionally less than ten pounds; that she can stand and/or walk less than two hours in an eight-hour day; that she is able to sit about six hours in an eight-hour day; that she can use her upper extremities on a repetitive basis; that she has no mental limitations (Medical Packet, page 113).
18. Medical exam on August 11, 2010 states the claimant is normal generally, and for HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neuro, mental; and that her condition is stable (Medical Packet, pages 7 and 8).
19. Medical exam on August 18, 2010 states the claimant is ambulatory, alert, and oriented x3, and not in cardio respiratory distress; that neurologically cranial nerves are intact; that muscle strength in extremities is 5/5; and that mood is cooperative (Medical Packet, pages 303 and 304).
20. Medical exam on September 23, 2010 states the claimant's examination areas are normal generally, and for HEENT, respiratory, cardiovascular, abdominal, musculoskeletal, neuro, and mental; and that condition is improving (Claimant Exhibit A, pages 5 and 6).
21. Medical exam on December 22, 2010 states the claimant's examination areas in general, respiratory, cardiovascular, abdominal, musculoskeletal, neuro, mental are normal, and HEENT as mild enlargement of nasal congestion; and that condition is stable (Claimant Exhibit A, pages 3 and 4).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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 of record establishes that the claimant has not engaged in substantial gainful activity since January 10, but is currently working part-time two and a half hours a day, Monday through Thursday. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record does not establish that the claimant is significantly limited in performing basic physical work activities, as defined below, for the required duration stated below of one continuous year.

...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).

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 the burden of proof to establish that she has a severely restrictive physical impairment that has lasted or can be expected to last for the duration of at least 12 months. There is insufficient objective medical evidence in the record that claimant suffers a severely restrictive physical impairment meeting the required one year continuous duration.

Claimant has reports of pain in her body. There are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant.

The medical evidence of record shows that the claimant has been working part-time since January 2010, two and a half hours per day, four days a week.

Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before. 20 CFR 416.972(a). This partial work establishes that the claimant has at least some residual functional capacity for work even though she is physically impaired.

Medical evidence of record in February 2010 states the claimant's condition is stable; that she is able to stand and/or walk up to less than two hours; that she is able to work at her usual occupation; and that she can work any job with limitations on lifting; that in August 2010, the medical evidence stated that the claimant is able to lift/carry occasionally less than ten pounds.

In the latter part of February 2010, claimant's foot doctor opined that she is unable to work because of pain.

The medical evidence of record shows a statement by a doctor that a claimant cannot work because of pain. A statement by a medical source finding that an individual is "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e), especially when there are contrary medical statements that the claimant can work and she is actually working part-time.

Therefore, disability is denied at Step 2.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the claimant's condition does not give rise to the finding that she would meet a statutory listing in the Code of Federal Regulations. In order to qualify as disabled, a severe impairment for the required duration has to be first established under Step 2.

The claimant offered no evidence by a treating, examining, or nontreating physician addressing any Social Security Listing. To the contrary, the SHRT medical consultant addressed the issue and found no disability under Step 3.

If claimant had not already been denied disability at Step 2, she would have to be denied again at Step 4 based upon her ability to perform her past work despite her impairment. There is no evidence upon which this ALJ could base a finding that claimant is unable to perform work in which she has engaged in the past for the required one year duration. Therefore, disability would be denied again at this step.

The ALJ will continue to proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

If claimant had not already been denied at Steps 2 and 4, she would be denied again at Step 5. At Step 5, the objective medical evidence of record does not establish that the claimant is without a residual functional capacity for the required duration 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).

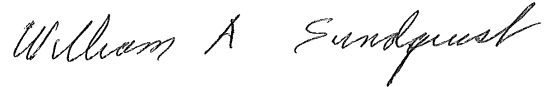
Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do sedentary tasks, as defined above, if demanded of her, even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. Therefore, disability is denied at Steps 2, 4 and 5.

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, Medicaid denial is UPHELD.



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

Date Signed: November 4, 2011

Date Mailed: November 4, 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 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/tg

cc:

