

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201122874
Issue No: 2009
Case No: [REDACTED]
Hearing Date December 7, 2010
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

ORDER OF RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request filed by Claimant's [REDACTED] requesting reconsideration on February 24, 2011.

At the original hearing on December 7, 2012 the Claimant requested a 2nd SHRT review of additional medical reports (Claimant Exhibits A, B and C). SHRT included additional medical reports obtained from SSA (Medical Packet, Pages 50-72) and issued its 2nd decision dated December 16, 2012 (2nd Medical Packet for a total update of 74 pages).

ISSUE

Whether Administrative Law Judge erred by not considering the:

1. Medical Consultant's Report (Medical Packet, Pages 3-6),
2. Combination of impairments diagnosed and detailed in the medical documents contained in the record, and
3. Physician's answers to work questions regarding Claimant's physical functional capacity to perform any kind of work for 1 full year (Claimant Exhibit B, Pages 1 and 2).

The Administrative Law Judge disagrees with the Claimant as discussed below.

FINDINGS OF FACT

The Findings of Fact established in the original Decision and Order are hereby incorporated:

1. Medical examination on February 13, 2010 states the Claimant's GAF score of 35 (Medical Packet, Pages 45 & 46).
2. On February 18, 2010, Claimant applied for MA-P alleging disability based on depression, anxiety attacks, poor memory, limitation to walking 2 blocks, and lifting/carrying 15 pounds, and standing and breathing difficulty.
3. On April 29, 2010, Medical Consultative Report states the Claimant's FEV 1 value of .58 and a FVC value of 1.37; and that testing indicates severe obstruction as well as low vital capacity, possible from a concomitant restrictive defect (Medical Packet, Pages 3-6).
4. On August 25, 2010, Medical Consultative Report states the Claimant's FEV 1 value of 3.97 and FVC value of 5.47; and that testing indicates a **very slight** obstruction; that she is getting progressive improvement with endurance; and that she can lift about 20 pounds (Medical Packet, Pages 52 and 53).
5. Psychological examination on October 9, 2010 states the Claimant's GAF score of 50 (Medical Packet, Page 63).
6. Medical report on November 23, 2010 answered questions submitted by Claimant regarding whether or not she could physically perform work activities 5 days a week, 8 hours a day, regarding her diagnosed medical problems. The answers were **no** to the following questions:
 - Standing with little walking for a six (6) hour period in a day on a sustained basis
 - Sitting at a desk for up to six (6) hours working with arms and hands with a 15 minute break in the morning and afternoon, and a lunch break, on a sustained basis
 - Working continuously for six (6) hours of an eight (8) day with a 15 minute break in the morning and afternoon plus lunch break
 - Lifting up to 10 pounds 6 hours out of an 8 hour work day

The answers were **yes** to the following questions:

- Opinion whether restrictions will continue for a full year (Claimant Exhibit B, Pages 1 and 2).

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.

Issue 1:

Persons of a height without shoes of 66 to 67 inches and an FEV 1 value equal to or less than 1.35 has a severe respiratory impairment. Listing 3.02A.

Persons with a height without shoes of 66 to 67 inches and an FVC equal to or less than 1.55 has a severe respiratory impairment. Listing 3.02B.

The undisputed medical evidence of record established a severe respiratory impairment in April 2010 and a slight (non-severe) impairment in August 2010 above.

The Claimant has not established, on date of application, a severe respiratory impairment that had lasted or was expected to last for a one year continuous duration.

Issue 2:

On date of MA-P application the Claimant alleged she was disabled due to a combination mental/physical impairment.

In February 2010 Claimant had a GAF score of 35 and in October 2010 a score of 50.

Scores of 50 and below are considered severe mental impairments with job-functioning. And 51 and higher non-severe or a moderate mental impairment with job-functioning. DSM-IV (4th edition-revised).

Claimant's score of 50 is a borderline severe/non-severe impairment with job-functioning.

The above 2 different scores do not meet the duration requirement of 1 continuous year, as required below.

The evidence of record established the GAF score of 35 in February 2010, MA-P/SDA application in February 2010, and GAF score of 50 in October 2010. The scores are

eight (8) months apart or less than the required one (1) continuous duration. The medical evidence of record does not establish appropriate abnormal mental findings shown to persist on repeated examinations that the mental impairment was expected to last for a continuous period of 12 months.

...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).

Most of the medical reports of record are examination, diagnostic and treatment reports. These reports did not provide medical assessments of the Claimant's work limitations/restrictions relative to Claimant's diagnosed medical impairments on date of

MA-P application. For example, are the Claimant's medical impairments slight, mild, moderate (non-severe, as defined above) or severe, as defined above?

There is no medical evidence of record that established the Claimant's inability to understand, remember, and carry out simple work instructions. The Claimant was able to understand, remember and answer questions at the hearing without difficulty.

Therefore, Claimant did not establish a severe impairment in combination that had lasted or was expected to last for a one year continuous duration.

Issue 3:

The physician's answers to the questionnaire regarding Claimant's work restrictions lasting a full year are conclusions without any reasoning.

The medical evidence of record establishes that in April 2010 the Claimant is well-nourished, and in no acute distress; that she had a normal range of motion in her extremities; and that neurologically she is unremarkable; that in July 2010 the Claimant was in no acute distress; that her back condition was normal; that her extremities had a normal range of motion; that in August 2010 she had a capacity to lift 20 pounds; and that in November 2010 she had the functional capacity to lift up to 10 pounds six (6) hours a day, 5 days a week.

This Administrative Law Judge finds the evidence above insufficient to establish a severe physical impairment, as defined above.

Claimant based substantial gainful work on a full-time job.

Substantial work activity is work activity that involves doing significant physical or mental activities. Your work maybe 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).

The date of the MA-P application was February 18, 2010. The medical opinion above was on November 23, 2010, that the Claimant would have the physical restrictions for a full year. That opinion is 9 months after the date of the application and does not relate back to the application date.

Therefore, this Administrative Law Judge does not give very much weight to the medical opinion for all the discussion above.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the original decision is correct, and accordingly, the original decision stands.

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

Date Signed: June 4, 2012

Date Mailed: June 5, 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:

