

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

IN THE MATTER OF:

[REDACTED]  
[REDACTED]  
[REDACTED]

Reg. No. 2011-30850  
Issue No. 2009  
Case No. [REDACTED]  
Hearing Date: July 21, 2011  
Genesee County DHS (#2)

**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 July 21, 2011.

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

**ISSUE**

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

**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 not worked since November 24, 2009.
2. On November 24, 2009, the claimant quit his last job.
3. Claimant's vocational factors are: age 48, GED, and past work experience as unskilled convenience store worker stocking shelves and a cash register operator, and skilled office manager supervising five workers.
4. On May 19, 2010, the claimant applied for Medicaid (and retro three months) and was denied on September 7, 2010 per BEM 260, and requested a hearing on November 24, 2010.

5. Claimant alleges disability due to arthritis, back pain, hearing, asthma, high cholesterol, hypertension, colon, diabetes, learning disability, depression and bipolar disorder.
6. Medical exam on March 12, 2009 states that the claimant's muscle strength of the major groups is 5/5, tone of the major group is normal, and normal muscle bulk; that range of motion is normal in the major joints; that sensory examination is within normal limits; that muscle strength is 5/5 in the upper extremities and lower extremities (Medical Packet, page 248).
7. Medical exam on June 4, 2009 states the claimant is alert and oriented to person, place, and time, was fluent and articulate in speech (Medical Packet, page 252).
8. Medical exam on March 23, 2010 states that claimant's joints in both upper and lower extremities are normal with full range of movements; that fine and gross dexterity in both upper extremities and grip in both hands are normal; that stance, posture and ambulation were normal; that she was unable to squat and unable to walk on heels and toes; and that she was having difficulty getting on and off the examination table (Medical Packet, pages 272 and 273).
9. Medical exam on March 23, 2010 states the claimant has a normal range of motion of the cervical spine, lumbar spine, shoulders, elbows, hips, knees, ankles, wrists; that the claimant has the ability to sit, stand, bend, stoop, carry, push, pull, button clothes, tie shoes, dress, undress, dial telephone, open door, make a fist, pick up coin, pick up pencil, write, squat, arise from squatting, get on and off examining table, climb stairs; that the claimant is able to walk on heels and toes and tandem walking; that gait is stable and within normal limits; that the claimant does not require a walking aid; that overall strength is 5/5 (Medical Packet, pages 274 to 277).
10. Medical exam on April 15, 2010 states the claimant is normal regarding HEENT, neck, thorax, heart, lungs, abdomen, and neuro (Claimant Exhibit A, page 16).
11. Medical exam on June 28, 2010 states the claimant's GAF last year of 50 and currently 60 (Medical Packet, page 67).
12. Medical exam on June 28, 2010 states that the claimant is not significantly limited in ability to ask simple questions or request assistance, maintain socially appropriate behavior and to adhere to basic neatness and cleanliness; and that he is moderately limited in ability to remember locations and work-like procedures, understand and remember one- or two-step instructions, carry out simple one- to two-step instructions, perform activities within a schedule, maintain regular attendance, and be punctual with customary tolerances, make simple work-related decisions,

and set realistic goals or make plans independently of others (Medical Packet, pages 68 and 69).

13. Medical exam on July 12, 2010 states the claimant has no physical limitations (Medical Packet, page 103).
14. SHRT report dated May 13, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 278).

### **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 establishes that the claimant has not been engaged in substantial gainful activity since November 24, 2009. 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 mental/physical work activities, as defined below, for the required duration stated below for a **continuous** one year duration.

...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 medical evidence of record establishes the claimant's current GAF score of 60 on June 28, 2010 and last year of 50. 50 is considered a borderline serious/moderate impairment with mental occupational functioning. And 60 is considered borderline moderate/mild impairment with mental occupational functioning.

The GAF score of 40 on April 7, 2010 was opined by a limited licensed psychologist.

Medical evidence of disability must be based on the findings of a fully licensed psychologist. BEM 600, page 7.

Therefore, no evidentiary weight is given to the opinion of the limited licensed psychologist.

The medical evidence of record does not address any physical work restrictions/limitations. To the contrary, the medical evidence of record establishes that the claimant had a normal range of motion of the cervical lumbar spine, shoulders, elbows, hips, and no physical limitations in July 2010.

Therefore, a severe mental/physical impairment expected to last for a continuous duration of at least one year was not established. Therefore, disability is denied at Step 2.

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

The claimant offered no evidence by a treating, examining, or non-treating physician addressing any Social Security Listing. And 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 was engaged in the past for the required one year continuous duration. Therefore, disability would be denied again at this step.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has a 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 of record does not establish that the claimant is without a residual functional capacity for other work in the national economy for the required duration of one continuous year.

...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 physical

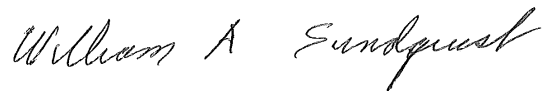
impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. Therefore, disability is denied at Steps 2, 4 and 5.

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.



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

Date Signed: November 9, 2011

Date Mailed: November 9, 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:

