

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

IN THE MATTER OF:

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Reg. No. 2011-32449
Issue No. 2009; 4031
Case No. ██████████
Hearing Date: July 21, 2011
Genesee County DHS (#5)

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

Was a severe mental/physical impairment expected to last for a one year continuous duration 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 not worked since August 2005.
2. In August 2005, claimant's reason for employment termination was unknown.
3. Claimant's vocational factors are: age 31, 12th grade education, and past work experience as a semi-skilled bartender, fast-food for ██████████, and civil engineering related work.
4. On September 3, 2010, the claimant applied for Medicaid (and retro for August), was denied on January 27, 2011 per BEM 260, and requested a hearing on April 21, 2011.

5. Claimant alleges disability due to polysubstance abuse, muscle weakness, liver problems, heart problems, depression and anxiety, fatigue, pain, arthritis in hips and knees, anemia, migraines, heart problems, kidney and liver problems.
6. Medical exam on April 29, 2010 states the claimant has no depression or hallucinations; that she has no chest pain, palpitations, fainting or weakness; that mental status is normal for age; that fund of knowledge is appropriate for age; that motor exam including muscle strength and bulk are normal; that gait is normal including tandem (Medical Packet, pages 94 and 95).
7. Medical exam on October 12, 2010 states the claimant is alert and oriented to person, place and time; that she has good mood and affect; that she has a normal respiratory effort; that there was tachycardia on heart exam; that S1 and S2 are normal; that there were no murmurs present; that cranial nerves are grossly intact; and motor and sensory systems are grossly intact (Medical Packet, page 28).
8. Medical exam on October 12, 2010 states the claimant is generally normal for HEENT, respiratory, except for shortness of breath, cardiovascular, except for chest pain, abdominal, musculoskeletal, neuro, except for seizure disorder, and mental (Medical Packet, pages 38 and 39).
9. Medical exam on October 29, 2010 states the claimant should not do any heavy lifting or strenuous exertion incident to an acute lumbar strain (Medical Packet, page 66).
10. Medical exam on November 10, 2010 states the claimant is oriented and her prognosis is good (Medical Packet, page 24).
11. Medical exam on November 17, 2010 states the claimant is alert and oriented to person, place and time; that mood and affect are good; that she has a normal respiratory effort; that heart was in a normal sinus rhythm; that there were no murmurs present; that liver spleen enlargement was noted; that cranial nerves are grossly intact; and that motor and sensory systems are grossly intact (Claimant Exhibit A, page 1).
12. Medical exam on February 22, 2011 states the claimant's GAF score of 55 (Medical Packet, page 93).
13. Medical exam on March 10, 2011, states the claimant's sacroiliac joints are symmetrical and normal (Claimant Exhibit B, page 4).
14. SHRT report dated May 23, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 97).

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 are used as a guideline and 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 claimant has not been engaged in substantial gainful work since August 2005. 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 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 restricted mental or physical impairment that has lasted or can be expected to last for the duration of at least one **continuous** year. There is insufficient objective medical evidence in the record that claimant suffers a severely restricted mental or physical impairment for that required duration.

The claimant introduced no mental/physical assessment reports of limitations/restrictions regarding her inability to perform basic work activities for the one year **continuous** duration stated above. 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 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 at least one **continuous** year. 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

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:

