

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-50506
Issue No. 4031
Case No. [REDACTED]
Hearing Date: December 1, 2011
Washtenaw 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 December 1, 2011.

ISSUE

Did claimant, on date of application, establish a severe impairment that had lasted or was expected to last for a 90-day **continuous** duration?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In December 2010, claimant ended her last job.
2. On March 29, 2011, claimant applied for SDA based on medical diagnoses of chronic low back, hip and leg pain, was denied on July 12, 2011 per BEM 261, and requested a hearing on July 26, 2011.
3. On date of application, claimant was age 45, with a high school education, and work experience as an unskilled residential housekeeper and bookbinder in a printing company, and semi-skilled work as a caregiver and medical administrative and physical assistance to doctors.
4. Medical exam on March 1, 2011 states the claimant's musculoskeletal exam does not have any tenderness and palpitation of her spine; and that she is able to walk on her toes and on her heels (Medical Packet, page 33).

5. Medical exam on March 1, 2011 states the claimant's condition is stable (Medical Packet, page 59).
6. Medical exam on March 30, 2011 states that the claimant has no sensory or motor deficits; that she had a negative straight leg raising test; that gait is normal; that she had a full range of internal/external rotation of both of her hips with mild pain upon internal rotation of the left hip; and that she has a full range of hip flexion (Medical Packet, page 31).
7. Medical exam on May 6, 2011 states the visualized tendons above the left hip are unremarkable (Medical Packet, page 28).

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

Facts above are undisputed.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

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 guidelines 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, disability is not denied. The evidence of record established that the claimant was not engaged in substantial gainful activity on date of application, nor currently.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish that the claimant's diagnosed impairments are severe and significantly limited her physical ability to do basic physical work activities, as defined below.

SEVERE 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).

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 reports of record are mostly examination, diagnostic, and treatment reports. They do not provide medical assessments of the claimant's work limitations/restrictions in order to determine whether or not the claimant has a severe impairment or nonsevere impairment relative to performing basic work activities, as defined above. Said in another way, these reports do not establish whether the claimant has a slight, mild, moderate (nonsevere impairment) or a severe impairment.

Medical disability cannot be established by the claimant's testimony alone. There must be supporting medical evidence.

It is the well-settled law that ALJs are not permitted to speculate at material facts in dispute. And it would only be a guess on the part of this ALJ to find a severe impairment based on the medical evidence of record.

DURATION OF IMPAIRMENT

You cannot be determined disabled without medically establishing the duration requirement, as defined below.

...[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.

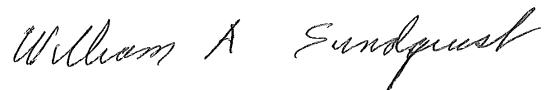
The medical evidence of record, on dated application, does not establish a severe impairment that has lasted or was expected to last for the 90-day continuous duration.

Therefore, disability is denied at Step 2.

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, SDA denial is UPHELD.



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

Date Signed: January 6, 2012

Date Mailed: January 9, 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/tg

cc:

