

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

IN THE MATTER OF:



Reg. No: 201152538
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 7, 2011
Isabella 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 Wednesday, December 7, 2011. Claimant appeared and provided testimony on her behalf.

ISSUE

Did Claimant, on date of application, establish a severe physical impairment that had lasted or was expected to last for a one year 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. On October 6, 2009, claimant ended her last job due to an auto injury.
2. On April 4, 2011, claimant applied for MA-P based on disabling complaints of back and leg pain, numbness and burning, neck problems and bilateral shoulder problems, was denied on June 1, 2011, and requested a hearing on September 1, 2011.
3. On date of application, claimant was age 25, with a high school plus education, and work experience as an semi-skilled retail jewelry sales person, waitress, doctor assistance in sterilization of equipment, and skilled hospital receptionist and cashier.
4. Medical exam on January 5, 2010, states that in terms of claimant's activity, certainly it would be nice to have her to begin something, but I think that it is unlikely that she would be able to return to any type of work especially climbing ladders, etc., at least for another 6 months,

somewhere around July; and she seems better today, but limited in what she is doing (Medical Packet, Pages 466 and 467).

5. Medical exam on March 2, 2010, states that the claimant is making progress; and that she continues to have difficulty with her walking with her toe kinda turning medial when she walks (Medical Packet, Page 465).
6. Medical exam on June 24, 2010, states the claimant's strength in the lower leg is diminished on the left side; and that she has positive straight leg raising (Medical Packet, Page 460).
7. Chiropractic exam on July 29, 2010, states the claimant is not to report to work on May 4, 2010 to December 31, 2010 (Medical Packet, Page 502).
8. Medical exam on September 7, 2010, states the claimant is doing well; that she has no new weakness, numbness, or paresthesias; that her strength in her lower extremities seems to be better; that the pain around her shoulder and neck continues which is normal; and that she should continue off work (Medical Packet, Page 659).
9. Medical exam on January 13, 2011, states that the claimant may be fully active within limits of pain, discomfort, motion, strength, balance and general health; that the claimant prognosis should be good (Medical Packet, Page 493).
10. Chiropractic exam on February 16, 2011, states the claimant should not work December 31, 2010 to June 30, 2011 (Medical Packet, Page 501).
11. Chiropractic exam on March 22, 2011, states the claimant should be off work until June 30, 2011 (Medical Packet, Page 386).

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.

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 460.912(a).

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, disability is not denied. The evidence of record establishes that the claimant has not been engaged in substantial gainful work on date of application, nor currently.

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

Severe/Non-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).

Duration of Impairment

You can not 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

201152538/WAS

In this case, the application was on April 4, 2011. So the window, is from one year before to one year after application. The severe physical impairment was sustained before the window in 2009.

In January 2010, the medical evidence of record shows that the claimant could return to work in July 2010. The Chiropractor's report in July 2010 supports the medical report with an opinion that the claimant should be off work from May 4, 2010 to December 31, 2010. Chiropractic reports cannot be used to establish incapacity or disability. BEM 260.

Most of the medical reports of record are mini examinations, diagnostic and treatment reports after claimant's car injury in 2009. They do not provide medical assessments regarding claimant's diagnosed medical impairments related to her ability to perform basic work activities, as defined above, for the one year continuous duration starting one year before the application or thereafter.

Therefore, disability as defined above is denied at Step 2 by the 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**.

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

Date Signed: April 2, 2012

Date Mailed: April 2, 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.

201152538/WAS

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

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