

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

**IN THE MATTER OF:**



Reg. No: 201154178  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: December 15, 2011  
Kent 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 Thursday, December 15, 2011. Claimant personally appeared and testified.

**ISSUE**

Did Claimant, on date of application, establish a severe physical impairment that had lasted or was it expected to last for a 1-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. In December 2010, Claimant ended her last employment due to health reasons.
2. In December 2010, Claimant alleges onset of physical disability due to severe migraines, chronic pancreatitis, irregular heartbeat, and abnormalities within the white matter in the right hemisphere, which were felt to be stable. (Medical Packet, Page 142).
3. Medical exam on December 5, 2010, states the Claimant is alert and initially agitated, but does calm down during the interview and exam; and that she is appropriately oriented and appears to be in no acute distress. (Medical Packet, Page 52).
4. Medical exam on January 3, 2011, states the Claimant's neurological cranial nerves 2-12 are grossly intact; that strength may be somewhat diminished in the right upper extremity but seems to be more secondary to poor effort; and that the rest of the physical examination is unremarkable. (Medical Packet, Page 88).

5. Medical exam on May 24, 2011, states the Claimant demonstrates generalized weakness, but she also has good movement strength in all 4 extremities. (Medical Packet, Page 120).
6. Medical exam on May 24, 2011, states the Claimant is moving all extremities equally well; that she ambulates with an even gait without any sense of imbalance to and from the bathroom without no one observing or watching. (Medical Packet, Page 122).
7. On June 21, 2011, Claimant applied for Medicaid; she was age 41, with a GED, and work experience as a skilled personal care of quadriplegics; and semi-skilled as a general quality control factory worker.
8. On July 22, 2011, Claimant's application was denied per BEM 260 with a hearing request on September 13, 2011.

### **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 (PAM), the Program Eligibility Manual (PEM) 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 claimant has the burden of proof to establish disability as defined above by the preponderance of the evidence of record that he meets the disability as defined above and in accordance with the 5 step process below. 20 CFR 416.920(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 was not engaged in substantial gainful work on date of application, nor currently.

In step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimants significant inability to perform basic physical work activities, as defined above, for the 1-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).

The Claimant's testimony regarding her disabling impairments, alone, is insufficient evidence to prove disability. It must be supported by competent material and substantial evidence on the whole record.

The medical reports of record are (mostly) examination, diagnostic and treatment reports. They do not provide medical assessments of Claimants basic work limitations/restrictions in order to determine whether she has a non-severe or severe impairment related to the performance of basic work activities. Said in a different way, are the Claimants medical impairments slight, mild, moderate or severe?

### **Duration of an 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 date of application, does not establish a severe physical impairment that had lasted or was expected to last for a 1-year **continuous** duration.

Therefore, disability has not been established at step 2, as defined above 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 20, 2012

Date Mailed: April 23, 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/kl

cc:

