

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

IN THE MATTER OF:



Reg. No: 201227229
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: March 22, 2012
Jackson 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, March 22, 2012. Claimant appeared and provided testimony on her behalf.

ISSUE

Was disability, as defined below, medically 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's MA-P/SDA application on September 16, 2011, was denied on January 20, 2012 per BEM 260/261, with a hearing request on January 27, 2012
2. Claimants vocational factors are: age 27, with high school or more education, and history of unskilled/semi-skilled work.
3. Claimant last worked in March 2011.
4. On date of application claimant alleges disability due to multiple medically diagnosed mental/physical disorders in combination – injuries from being hit by car, asthma, shortness of breath, back pain and depression.
5. Medical exam on January 13, 2011, states the claimant, regarding fracture dislocation of right ankle (hit by car December 30, 2010), and has swelling and is still quite marked around her foot and ankle (Medical Packet, Page 71).

6. Medical exam on February 9, 2011, states the claimant's physical examination shows her incisions all healing nicely; that she is doing well after surgical intervention for right crushed foot and right symptomatic ankle disruption (Medical Packet, Page 72).
7. Medical exam on March 2, 2011, states the claimant's physical examination shows her incisions are healing nicely; and that she has good motion of her ankle, wiggles her toes well, and distally neurovascular intact (Medical Packet, Page 73).
8. Medical exam on April 13, 2011, states the claimant's examination of her incisions reveals that they are healed nicely; that she has good range of motion of her ankle; that forefoot is not erythematous or swollen; that everything feels stable; that she is able to walk with a cane fairly well; and that she is doing well after her significant injuries of her right foot and ankle (Medical Packet, Page 74).
9. Medical exam on July 27, 2011, states the claimant's physical examination shows no obvious signs of swelling; that range of motion of the ankle is supple; that her ankle is stable to anterior drawer talar tilt testing; that motion of midfoot is diminished; that strength is 4+/5 throughout; that sensation is intact to light touch; that she has good pulse; and that her gait here in the office is antalgic (Medical Packet, Page 75).

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 Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 since March 2010.

At Step 2, disability is denied. The medical evidence of record does not establish the claimant's significant inability to perform basic work activities due to a severe

mental/physical impairment in combination for a 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).

The question is whether the claimant's medically diagnosed mental/physical disorders are non-severe or severe in combination based on the definition above. Said in another way, do claimant's medically diagnosed mental/physical disorders in combination impair the claimant slightly, mildly, moderately (non-severe, as defined above) or severely, as defined above?

Medical reports of record are diagnostic and treatment reports, and do not provide **medical assessments** of claimant's mental/physical limitations relative to ability to perform basic work activities, as defined above. 20 CFR 416.913(c)(1)(2).

The medical evidence of record establishes the claimant's severe ankle impairment in December 2010, and February, March and April 2011. But, not the duration requirement of one continuous year.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

Therefore, disability has not been established 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/SDA 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.

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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

cc:

