

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201236900
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: May 19, 2012
St. Joseph 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, an in-person hearing was held on Tuesday, June 19, 2012. Claimant appeared and provided testimony on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The record was extended 90 days for a 2nd SHRT review of medical reports introduced at the hearing (Claimant Exhibit A and B).

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. On August 19, 2011, Claimant's application for MA-P/SDA was denied on January 4, 2012 per BEM 260/261, and requested a hearing on January 17, 2012.
2. Claimant was age 50, with a high school or more education, and work experience as a skilled retail store manager, sales representative of a grocery store, and deli manager for a grocery store.
3. Claimant ended her last employment on August 2009, and became an unemployment compensation benefits recipient with exhaustion in July 2011.

4. Claimant alleges disability due to diagnosed medical impairments of acute anxiety, chronic depression, head tremors, and bipolar disorder (Medical Packet, Page 101).
5. The medical reports of record are examination, diagnostic, treatment, and progress reports, and establish diagnosed medical impairments above.
6. Medical reports of exams state the Claimant on:
 - a. April 13, 2011, does not appear to be acutely ill; that her head continues to bob back and forth as it has in the past; that she is coherent, alert and oriented, and talks logically in good sentences; and that her condition is deteriorating (Medical Packet, Pages 77-80).
 - b. October 17, 2011, November 9, 2011 and November 17, 2011, has no evidence of limitations in ability to remember locations and work-like procedures, ability to understand and remember 1 or 2-step instructions, understand and remember detailed instructions; carryout simple 1 of 2-step instructions, carryout detailed instructions, maintain attention and concentration for extended periods, sustain an ordinary routine without supervision, make simple work related decisions, maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, be aware of normal hazards and take appropriate precautions, and that she has a current GAF score of 48 to 55 (Medical Packet, Pages 19-21).
 - c. April 26, 2012, has a GAF score of 45 (Claimant Exhibit B, Page 4).
6. SHRT report dated April 21, 2012, states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 101).

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 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, disability is not denied. The evidence of record established the Claimant has not been engaged in substantial gainful activities since August 2009.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significantly functional incapacity to perform basic work activities due to a combination severe mental and physical impairments in combination that had lasted or was expected to last for a one year continuous duration, as define 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).

SEVERE IMPAIRMENT

To qualify for MA-P, claimant must first satisfy both the gainful work and the duration criteria (20 CFR 416.920(a)) before further review under severity criteria. If claimant does not have any impairment or combination of impairments which significantly limits physical or mental ability to do basic work activities, an ultimately favorable disability determination cannot result. (20 CFR 416.920(c)).

The medical evidence of record established Claimant's GAF scores of 48-55 in October and November 2011 and 45 in April 2012. This is approximately 7 months between the scores in October 2011 and April 2012.

45 and 48 are considered severe mental impairments with occupational-functioning, and 51 and above a non-severe mental impairment with occupational-functioning. DSM-IV (4th edition-revised).

The medical evidence of record does not establish the Claimant's abnormal mental/physical findings persisted on repeated examinations for a reasonable presumption to be made that a severe impairment has lasted or expected to last for at least one continuous year.

The Claimant testified that she has been attending a community college full-time; that she lacks on four hour math class to obtain her two year degree; and that she has an average grade point of 3.6 out of 4.0.

Whether an individual has one or a combination of medical impairments, the non-severe or severe impairment determination is the same. The medical evidence of record must establish, on date of application, a significant functional incapacity to perform basic work activities for the required duration.

In this case, the medical reports of record are examination, diagnostic and treatment reports. They do not provide medical assessments of Claimant's mental/physical limitations relative to her functional incapacity to perform basic work activities, as defined above. ...20 CFR 416.913(c)(1) and (2). Stated differently, does the combination mental/physical impairments medically impair the Claimant slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The medical evidence of record does not establish a combination severe mental/physical impairment meeting the one year continuous duration requirement. It established a non-severe impairment.

If disability had not already been denied at Step 2, it would also be denied at Step 3. The medical evidence of record, on date of application, does not establish the Claimant's impairments meet/equal a Social Security listing for a required duration.

Claimant introduced no medical evidence of record by a treating, examining, or non-examining physician that Claimant's impairments do meet the requirements of any Social Security listing. To the contrary, the SHRT medical consultant addressed the matter and found insufficient medical evidence of a disability under a Social Security listing.

If disability had not already been denied at Step 2, it would also be denied at Step 4. The medical evidence of record, on date of application, does not establish the Claimant's functional incapacity, despite her impairments, to perform any of her past work for the required one year continuous duration.

If disability had not already been denied at Step 2, it would also be denied at Step 5. The medical evidence of record, on date of application, does not establish the Claimant was without a residual functional capacity (RFC), despite her impairments, to perform any other work in the National Economy for a required one year continuous duration.

...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).

The medical evidence of record established the Claimant's head tremors as a physical impairment in combination with the mental impairments.

The medical evidence of record, on date of application, does not establish the Claimant was without a RFC for less strenuous work than her past work, such as sedentary work, as defined above. Under the Medical-Vocational Guidelines, an individual closely approaching advanced age of 50, with a high school or more education, and skilled work history who is limited to sedentary work is not considered disabled.

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 and also has not been established at Steps 3, 4 and 5 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, MA-P/SDA denial is **UPHELD**.

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

Date Signed: August 17, 2012

Date Mailed: August 20, 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.

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