

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201215041
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: February 9, 2012
Lapeer 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, February 9, 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. On September 6, 2011, claimant's application was denied for MA-P and terminated for SDA on November 18, 2011 per BEM 260/261, with a requested hearing on November 23, 2011.
2. Claimant was age 46, with a GED, and past semi-skilled work history in a Deli shop preparing sandwiches and desserts, maintenance and kitchen preparation work.
3. On March 23, 2010, claimant was released from prison.
4. On date of application, claimant alleges disability due to multiple surgical operations from May 2010 through January 10, 2011.
5. Psychological exam on May 31, 2011, states the claimant GAF score of 54 (Medical Packet, Page 13).

6. Medical exam on September 22, 2011, states the claimant's physical condition is stable (Medical Packet, Page 15).

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 23, 2010.

At Step 2, disability is denied. The medical evidence of record does not establish a severe mental/physical impairment, on date of application, that had prevented the claimant from performing basic work activities, that had lasted or was expected to last 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).

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 question for this Administrative Law Judge is whether or not the claimant's medically diagnosed disorders and disabling complaints are severe or non-severe, as defined above. Said in another way, do the claimant's medically diagnosed disorders and disabling complaints impair her slightly, mildly, moderately (non-severe, as defined above) or severely, as defined above?

Most of the medical reports of record are diagnostic and treatment reports, and do not provide medical assessments of claimant's work limitations/restrictions relative to inability to perform basic work activities, as defined above nor her past work and sedentary work activities, as defined above.

The psychological report of record in May 2011 established a GAF score of 54 for the claimant. 54 is a non-severe mental impairment with job-functioning. DSM IV (4th edition-revised).

Therefore, disability meeting the duration requirement of one continuous year for MA-P has not been established by the preponderance of the medical evidence of record.

SDA

The Department of Human Services has the burden of proof to establish the claimant's recovered non-severe physical impairment under the SDA program. BAM 600.

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 evidence of record had establish claimant's disability prior to the negative case action, the Department of Human Services had the burden of proof to establish that she no longer meets the disability criteria for SDA. The establishment of a recovered non-severe physical impairment was not sustained by the preponderance of the medical evidence of record.

Therefore, disability has not been established at Step 2 for the MA-P program, nor was a recovered non-severe physical impairment for the SDA program 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 MA-P/non-recovered SDA was not medically established.

Accordingly, Medicaid denial is **UPHELD**, and SDA termination is **REVERSED**.

1. Medical review for SDA is suggested in February 2013.

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

Date Signed: April 3, 2012

Date Mailed: April 4, 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/tb

cc:

