

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201227547
Issue No: 2009
Case No: [REDACTED]
Hearing Date: March 28, 2012
Hillsdale 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, March 28, 2012. Claimant appeared with her [REDACTED], [REDACTED].

The record was extended 90 days at the Claimant's request for a second SHRT review for additional medical reports (Claimant Exhibit A) submitted at the hearing.

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 application on September 15, 2011 was denied on January 3, 2012 per BEM 260.
2. Claimant was 49, with an high school plus education, and history as a semi-skilled nurse assistant.
3. Claimant last worked in February 2011.
4. Claimant alleges disability due to a diagnosed slipped disc.
5. Medical exam on April 16, 2011, states the Claimant has a mild to moderate disc narrowing and mild disc bulging at T11-T12; that there is mild degenerative disc narrowing with minimal disc bulging; that

intervertebral disc at L1-L2 and L2-L3 are not significantly narrowed; that there is mild degenerative signal in each of the disc's from L3-L4 through L5-S1; that there is very mild degenerative disease with a slightly narrowed appearance of the disc at L3-L4 (Claimant Exhibit A, Page 3).

6. Medical exam on April 18, 2011, states the Claimant's gait is antalgic; that muscle tone in lower extremity is normal; that paraspinous muscle tone is normal (Medical Packet, Page 31).
7. Medical exam on April 18, 2011, states the Claimant's strength in the bilateral lower extremity is normal (Medical Packet, Page 32).
8. Medical exam on May 31, 2011, states the Claimant's restrictions: sedentary work-lifting 10 pounds max and occasionally lifting and/or carrying articles like small tools. Certain amount of walking and standing up are often necessary. Walking and standing required only occasionally (Medical Packet, Page 28).
9. Medical exam on December 14, 2011, states the Claimant has moderate discomfort related to her back pain (Claimant Exhibit A, page 9).
10. Medical exam on January 18, 2012, states the Claimant has normal alignment without coronel or sagittal deformity or in-balance; that she has normal range of motion of the spine (Claimant Exhibit A, Page 6).
11. Medical exam on February 29, 2012, states the Claimant can lift/carry occasionally 10 pounds; that she can stand and/or walk less than 2 hours in an 8 hour work day; that she requires no assistive devices for ambulation; that she can use upper and right lower extremities on a repetitive basis (Claimant Exhibit A, Page 2).
12. Medical exam on June 27, 2012, states the Claimant's gait is normal; that muscle tone in lower left extremity is normal (Claimant Exhibit A, Page 35).

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 claimant has the burden of proof to establish disability as defined above by the preponderance of the evidence of record and in accordance with the 5 step process below. 20 CFR 416.912(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).

Disability is not denied at Step 1. The evidence of record establishes that the Claimant has not been engaged in substantial gainful work since February 2011.

Disability is denied at Step 2. The medical evidence of record does not establish, on date of application, the Claimant's significant inability to perform basic work activities due to a physical impairment 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 diagnosed physical disorder is non-severe or severe, as defined above. Said in another way, does Claimant's diagnosed physical disorder impair the Claimant slightly, mildly, moderately (non-severe impairment, 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 physical limitations relative to inability to perform basic work activities, as defined above. 20 CFR 416.913(c)(1) and (2).

The medical evidence of record established a non-severe physical impairment, as defined above. Therefore, a severe physical impairment meeting the one year continuous duration requirement, as defined above, has not been established.

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 denial is **UPHELD**.

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

Date Signed: May 21, 2012

Date Mailed: May 22, 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:

