

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20129136
Issue No: 2009
Case No: [REDACTED]
Hearing Date: July 10, 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, an in-person hearing was held on Tuesday, July 10, 2012. Claimant appeared with her authorized representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

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

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 December 9, 2010, was denied on January 28, 2011 per BEM 260, with a hearing request on April 25, 2011.
2. Claimant is age 47, with a 8th grade education, and semi-skilled work experience as a caregiver and [REDACTED] security guard. Stipulated by both representatives for the Claimant and the DHS.
3. Claimant's last employment ended unknown; therefore, she became an unknown unemployment compensation benefits recipient with exhaustion unknown. Whether or not she has been employed since her application is unknown. [REDACTED] and DHS agreed?

4. Claimant alleges disability due to medically diagnosed disorders of diabetes, hypertension, high cholesterol, back and chest pain, gastroparesis, and learning and memory disorder (Medical Packet, Page 183).
5. Medical reports of record are examination, diagnostic, treatment and progress reports and do not provide medical assessments of Claimant's work limitations.
6. SHRT report dated December 8, 2011, states the Claimant's disorders do not meet/equal a Social Security listing (Medical Packet, Page 183).

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 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).

Step 1, eligibility is denied. The evidence of record does not establish the Claimant has not been engaged in substantial gainful activities before, on, or after her MA-P application due to her absence from the hearing.

If disability had not been denied at Step 1, it would also been denied at Step 2. The medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity to perform basic work activities for the required 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 Claimant's representative admitted the medical reports of record are examination, diagnostic, and treatment reports and they do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, the medically diagnosed disorders do not establish whether or not the Claimant is impaired slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The Claimant's representative admitted that there is no medical evidence of record providing medical assessments of Claimant's inability to perform any work for the one year continuous duration.

It's a well settled law that fact-finders are not permitted to speculate at material facts in dispute. And it would only be a guess as to whether a severe impairment had been medically established, as defined above, based on the medical evidence of record.

Therefore, the Claimant has not sustained her burden of proof to establish a severe impairment, instead of a non-severe impairment, for the required duration.

If Step 1 disability had not been denied, Steps 3, 4 and 5 would also be denied. The medical evidence of record, for the required durations, does not establish Claimant's impairments meet/equal a Social Security listing at Step 3, inability to perform her past work of semi-skilled employment as a caregiver and street-crossing guard at Step 4, and without a residual functional capacity (RFC) to perform any other work in the National Economy, such as sedentary work, as defined below, at Step 5. Under Step 5 Medical-Vocational guidelines, Rule 201.19, younger individuals age 47, with an 8th grade education, and semi-skilled past employment who are limited to sedentary work are not considered disabled.

...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).

Therefore, disability has not been established at Step 1 and also has not been established at Steps 2, 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 as defined above has not been medically established.

Accordingly, MA-P denial is **UPHELD** and SO ORDERED.

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

Date Signed: September 21, 2012

Date Mailed: September 24, 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:

