

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201311849
Issue No: 2009
Case No: [REDACTED]
Hearing Date: April 18, 2013
Macomb County DHS #36

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, April 18, 2013. Claimant appeared and provided testimony on his behalf with [REDACTED] Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Was disability, as defined below, medically established for the period of August 1, 2012 through October 16, 2012?

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 August 5, 2012 was denied on October 31, 2012 per BEM 260, with a hearing request on November 8, 2012.
2. Vocational factors: Age 49, with a high school or more education, and past 15 years of unskilled work experience as an assistant teacher of preschool children, ages 4-5.
3. Claimant last worked on March 22, 2012.
4. Claimant alleges disability due to arthritis, gout, liver transplant, ulcerative colitis, colostomy, and migraine headaches. (DHS Exhibit A, Pg. 177).
5. Claimant's disabling symptoms are primarily chronic diarrhea approximately thirty times a day requiring the wearing of a pad diaper.

6. Medical reports of exams state the claimant on:
 - a. April 24, 2012: Had follow up to March 22, 2012 medical treatment. (DHS Exhibit A, Pg. 26).
 - b. April 25, 2012: Has an increasing irritation around her ostomy site; that she is emptying the bag prior to it becoming full approximately 6-10 times a day; that she has a history of ulcerative colitis. (DHS Exhibit A, Pg. 26-27).
 - c. July 9, 2012: Is emptying bag 10 times a day. (DHS Exhibit A, Pg. 26).
 - d. August 13, 2012: Had surgical clearance for August 27, 2012. (DHS Exhibit A, Pg. 20).
 - e. August 27, 2012: Had ileostomy closure and anal dilation. (DHS Exhibit A, Pg. 177).
 - f. SHRT at first denied approval based on duration and Claimant's age of 49 and vocational rule 201.12. (DHS Exhibit A, Pg. 177).
 - g. January 17, 2013: SHRT determined Claimant was disabled effective October 17, 2012 based on Claimant's age of 50 under vocational rule 201.12.
7. State Hearing Review Team decision dated January 17, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 177).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

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).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

The claimant had the burden of proof to establish disability in accordance with steps 1-4 below... 20CFR 416.912 (a). The burden of proof shifts to the DHS at Step 5... 20CFR 416.960 (c)(2).

Acceptable medical verification sources are licensed physicians, osteopaths, or certified psychologists ...20CFR 416.913(a)

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Step 1

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

The evidence of record established that the claimant has not engaged in substantial gainful activity since March 22, 2012. Therefore, the sequential evaluation is required to continue to the next step.

Step 2

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

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).

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).

...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).

The medical reports of record are mostly examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, the medical reports do not establish whether the Claimant is impaired slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above.

The claimant's disabling symptoms (Findings of Fact #5) are consistent with the objective medical evidence of record (Findings of Fact #6).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

After careful review of the medical evidence of record, this ALJ does not find a significant functional difference between her physical condition on date of MA-P application (August 5, 2012) and prior to October 17, 2012 (SHRT subsequent effective approval date). The objective medical evidence of record shows that since April, 2012 Claimant has had increasing irritation around her ostomy site; and that she is emptying a bag prior to becoming full approximately 6-7 times a day; and that in July, 2012 she was emptying a bag 10 times a day.

Claimant testified that she has chronic diarrhea going to the bathroom approximately 30 times a day requiring the use of a diaper pad.

The Claimant has sustained her burden of proof to establish a severe physical impairment in combination, instead of a non-severe impairment, for the required *one year* duration. Therefore, the sequential evaluation is required to continue to the next step.

Step 3

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

The Claimant introduced no medical evidence of record that her impairments meet/equal a Social Security listing. Therefore, the sequential evaluation is required to continue to the next step.

Step 4

...We will consider your statements about the intensity, persistence, and limiting effects of your symptoms, and we will evaluate your statements in relation to the objective medical evidence and other evidence in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(4).

...We consider that your work experience applies when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 year or more before the time we are deciding whether you are disabled applies.... 20 CFR 416.965(a).

Medical evidence of record establishes the Claimant's inability to do her past work as an assistant teacher of pre-school children due to a severe physical impairment. Therefore, the sequential evaluation is required to continue to the next step.

Step 5

Under Step 4, the claimant introduced objective medical evidence of record of a severe physical impairment and her inability to do her past work (Findings of Fact #2). Therefore, this ALJ finds that the Claimant is unable to do less strenuous work as her past work, such as sedentary type work, as defined below.

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).

Medical-Vocational guidelines, Rule 201.21 does not apply in this case. A younger person, aged 39 with a high school or more education, and unskilled work history is not covered under the guidelines. This covers persons who are semiskilled.

Therefore, medical disability has been established at Step 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 disability was medically established.

Accordingly, MA-P denial is **REVERSED** and coverage from August 1, 2012- October 16, 2012 so ORDERED.

/s/

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

Date Signed: April 26, 2013

Date Mailed: April 29, 2013

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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cc:

