

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201243676
Issue No: 2009
Case No: [REDACTED]
Hearing Date: July 19, 2012
Clinton 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 Thursday, July 19, 2012. Claimant appeared with her authorized representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

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 October 31, 2011, was denied on January 5, 2012 per BEM 260, with a hearing request on April 3, 2012.
2. Vocational Factors: Age 55, with a high school education, and history of semi-skill/skilled work.
3. Last employment ended August 2011; current employment as a Green House work, 20 hrs/week. Started May 12th and ended July 18, 2012.
4. Disability is alleged due to a combination severe physical impairment (Medical Packet, Page 73).

5. Medical reports of record state the Claimant on:
 - a. July 4, 2011, had trauma from motorcycle accident (Medical Packet, Page 46).
 - b. July 8, 2011, was discharged from the hospital (Medical Packet, Page 49).
 - c. July 6, 2011, has 5 out 5 strength in right upper extremity; that bilateral lower extremities are 5 out 5; that reflexes are +2 and symmetrical; that sensation is intact to light touch; that MRI scan seems to be stable; that plan is just to keep her in a TLSO brace; that whenever she sits up, she needs to be in a TLSO brace or standing or ambulating (Medical Packet, Page 65).
 - d. August 3, 2011, is well-developed, well-nourished, and no apparent distress; that musculoskeletally she has a normal gait, grossly normal tone and muscle strength; that she has a full painless range of motion of all major muscle groups and joints with no laxity or subluxation of any joints; that neurologically her cranial nerves II-XII are grossly intact (Medical Packet, Page 63).
 - e. August 26, 2011, has a stable condition (Medical Packet, Page 45).
 - f. September 13, 2011, has a normal gait and grossly normal tone and muscle strength; that she has a full painless range of motion of all major muscle groups and joints with no laxity or subluxation of any joints; that neurologically her cranial nerves II-XII are grossly intact (Medical Packet, Page 60).
 - g. November 1, 2011, has a normal gait and grossly normal tone and muscle strength; that she has a full painless range of motion of all major muscle groups and joints with no laxity or subluxation of any joints; that neurologically her cranial nerves II-XII are grossly intact (Medical Packet, Page 57).
6. SHRT report dated May 18, 2012, states the Claimant's disorders do not meet/equal a Social Security listing (Medical Packet, Page 73).

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).

At Step 1, disability is not denied. The evidence of record established the Claimant has not been engaged in substantial gainful activities since her part-time Greenhouse work 20 hours a week ending July 18, 2012.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity to perform basic work activities due to a combination severe 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).

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)).

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 don't provide medical assessments of Claimant's 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 physical impairment medically impair the Claimant slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The Claimant and her hearing representative in preparation for the hearing admitted that they looked over the medical reports; that there is no opinion that Claimant was unable to do any work for the one year continuous duration; and that the medical reports of record are examination, diagnostic, and treatment reports, and do not provide residual functional capacity (RFC) assessments of Claimant's work limitations, except for the medical examination on August 26, 2011 at pages 44 and 45 of the medical packet.

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

Therefore, disability has not been established at Step 2 and also has not been established at Steps 3 and 4 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 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 25, 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.

201243676/WAS

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:

