

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201256397
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: August 23, 2012
Van Buren 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 August 23, 2012. Claimant appeared and provided testimony on his behalf. 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/SDA application on February 7, 2012 was denied on May 17, 2012 per BEM 260/261, with a hearing request on May 29, 2012.
2. Claimant was age [REDACTED] with a 12th grade education and included work experience as an unskilled dish washer and factory assembly of 2 oz plastic pads, and skilled truck delivery of packages weighing up to 70 pounds. (DHS Exhibit A, Page 53).
3. Claimant's last employment ended April 9, 2010 due to a firing; thereafter, he became an Unemployment Compensation Benefit recipient with exhaustion in April 2012.
4. Claimant alleges disability due to medically diagnosed disorders of mental problems. (DHS Exhibit A, pg 149).
5. Medical reports of record state the Claimant on:
 - a. Was not significantly limited in ability to remember locations and work like procedures, understand and remember one or two-step

instructions, carry out simple one or two-step instructions, perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, sustain an ordinary routine without supervision, make simple work-related decisions, complete a normal workday and worksheet without interruptions from psychologically base symptoms and can perform at a consistent pace without an unreasonable number and length of rest periods, ask simple questions or request assistance, maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, respond appropriately to changing with setting, be aware of normal hazards and take appropriate precautions, travel in unfamiliar places or use public transportation, and set realistic goals or make plans independently of others; that he was moderately limited ability to understand and remember detail instructions, and carry out detailed instructions; and that he had a current GAF score of 50 and a last year of 50. (DHS Exhibit A pgs 37, 44, and 45).

6. State Hearing Review Team decision dated July 11, 2012 states the Claimant's disorders do not meet/equal a Social Security listing (Medical Packet).

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

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.

The burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 416.912(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, disability is not denied. The evidence of record established the Claimant has not been engaged in substantial gainful activities since April 9, 2010 after which his UCB expired in April 2012.

Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional mental incapacity to perform basic work activities for the required 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)).

The medical evidence of record established Claimant's GAF current score of 50 in April 2012 and a last year score of 50. These scores are considered borderline non-severe/severe mental impairments with occupational-functioning. DSM-IV (4th edition-revised).

The medical evidence of record does not establish the Claimant's abnormal mental findings have persisted on repeated examinations for a reasonable presumption to be made that a severe impairment has lasted or expected to last for at least one continuous year.

Medical report dated April 28, 2012 states the Claimant injured his right shoulder by throwing out concrete basement molds with the onset of shoulder pain; that he does not make use of any medication for his symptoms; the musculoskeletally he has no joint instability; that grip strength is **mildly** diminished on-the right; that he had no difficulty getting on and off the examination table; that ROM was **normal** and for the right shoulder; that strength and function are **normal**; that sensory function remains intact; that there is no shoulder girdle atrophy or spasm; that reflexes are intact; that there was **some** tenderness with movement in certain planes of the joint; that there is no evidence of nerve impingement in the right upper extremity; that there was no overt evidence of shoulder girdle atrophy.

The Claimant claims only a disabling mental impairment, and not a disabling physical impairment. Therefore, the above physical examination report is irrelevant in this case.

The medical reports of record are examination, diagnostic, treatment and progress reports and 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?

In addition, Claimant did receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept him from working for a period of 12 months or more. Claimant did last work on April 9, 2010. Claimant received unemployment compensation benefits before, on, and after MA-P application until exhausted as of April 2012.

It is the well settled law that fact-finders are not permitted to speculate at material facts on 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 his burden of proof to establish a severe mental impairment, instead of a non-severe impairment, for the required duration.

If Step 2 disability had not been denied, Steps 3 and 4 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, and inability to perform his past unskilled work as a dishwasher and skilled work as a truck driver, at Step 4.

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 claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

Therefore, disability has not been established at Step 2 and also would not be 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 disability was not medically established.

Accordingly, MA-P/SDA denial is **UPHELD**.

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

Date Signed: December 28, 2012

Date Mailed: January 2, 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error , or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
- the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

WAS/cr

cc:

