

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-64400
Issue No: 2009
Case No: [REDACTED]
Hearing Date: October 16, 2012
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 October 16, 2012. Claimant appeared and provided testimony on her 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 application on May 23, 2012 was denied on June 28, 2012 per BEM 260, with a hearing request on July 12, 2012.
2. Vocational factors: Age [REDACTED] a GED, and history of unskilled work experience as a bartender and home health care giver.
3. Last employment ended September, 2008 due to medical reasons.
4. Claimant alleges disability due to medically diagnosed disorders of neck and back pain, high blood pressure, chronic obstructive pulmonary disease (COPD) and anxiety (DHS Exhibit A, Pg. 22).
5. Medical reports of record state the Claimant on:
 - a. April 9, 2012: Upper extremity strength was slightly limited and lower extremity was normal; generally she has a pain level that appears to be mildly anxious; that musculoskeletal she has mild

tender right paraspinal with very limited range of motion with strength of 4/5; in the neuro ar ea, her L-S spine was tender and guarded and range of motion with flex at 60 degrees and extension at 30 degrees with LE st rength 5/5; that ment ally she is anxious, alert and oriented x3 and that her c ondition is deteriorating (DHS Exhibit A, Pgs. 1 &2).

b. July 6, 2012: has a GAF score of 60 (DHS Exhibit A, Pg. 20).

6. State Hearing Review Team decision dated August 23, 2012 stat es the Claimant's disorders do not m eet/equal a Social Security listing (DHS Exhibit A, Pg. 22).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemen ted by T itle 42 of the C ode 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 th e Bridges Reference Manual (BRM).

Facts above are undisputed.

"Disability" is:

...the inability to do any substant ial 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 y ou are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, educati on 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 sequentia l order. If dis ability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perf orm S ubstantial 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 September, 2008.

Step 2, disability is not denied. 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 defined below. It does establish a reverse physical impairment for the required duration based on the *de minimus* standard.

...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 burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 460.912(a).

STEP SEQUENTIAL PROCESS

- (1) Is gainful work being performed by claimant?
- (2) Will claimant's impairment(s) either result in death or satisfy the 12-month duration requirement?
- (3) Is the impairment(s) severe?
- (4) Does the impairment(s) meet or equal the Listing of Impairments set forth in Appendix 1?
- (5) Does claimant have any residual functional capacity?
- (6) Is past work performance prevented by the impairment(s)?

(7) Is performance of other relevant work prevented by the impairment(s)?

(8) Does claimant have a marginal education and extensive work experience of arduous unskilled physical labor?

(9) Is claimant of advanced age, with limited education and without work experience?

12-MONTH DURATION

Unless an impairment(s) is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. (20 CFR 416.909). This is called the duration requirement.

Acceptable medical resources about your impairments are by an MD, DO or fully licensed psychologist. Medical reports should include (1) assessments of your ability to do work related activities such as sitting, standing, moving about, lifting, carrying, handling objects, speaking and traveling; (2) in cases of mental impairments, your ability to reason or make occupational, personal, or social adjustments 20 CFR 416.913(a)(c)(1) & (2).

The medical evidence of record establishes claimant's GAF score of 60 in July, 2012. This is considered a moderate (not severe) mental impairment with occupational functioning. DSM-IV (4th edition-revised).

Therefore, claimant has sustained her burden of proof to establish a severe physical impairment, instead of a non severe impairment for the required duration and sequential evaluations required to continue.

Step 3, disability is denied. The medical evidence of record for the required duration, does not establish claimant's impairments meet/equal a Social Security listed impairment.

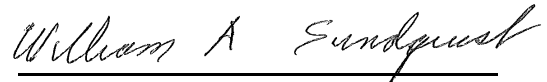
Step 4, disability is denied. The medical evidence of record, on date of application, does not establish the claimant's functional physical incapacity, despite her impairments to perform any of her past work – such as a bartender and home health care giver for the required duration of one year continued duration.

Therefore, medical disability has not been established at Step 3 and it also has not been established at Step 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 denial is **UPHELD**.



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

Date Signed: February 8, 2013

Date Mailed: February 8, 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

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Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Recons ideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

WAS/jk

cc:

