

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

IN THE MATTER OF:



Reg. No: 201264935
Issue No: 4031
Case No: [REDACTED]
Hearing Date: October 16, 2012
Genesee County DHS #02

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] and [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 SDA application on February 3, 2012 was denied on July 2, 2012 per BEM 261, with a hearing request on July 9, 2012.
2. Vocational factors: Age 34, a GE D, and history of semi-skilled certified nurses assistant.
3. Last employment ended 2009.
4. Claimant alleges disability due to medically diagnosed disorders of a frozen shoulder, diabetes, headaches, carpal tunnel syndrome, lupus, fibromyalgia and rheumatoid arthritis (DHS Exhibit D, Pg. 5).
5. Medical reports of record state the Claimant on:
 - a. January 31, 2012: is well-developed, well-nourished and in no cardio respiratory distress; that she is alert and oriented to time, place and person; that she ambulates to the examination room

without assistance; that she is able to sit comfortably on the examination table without difficulty or evidence of pain; that neurologically, her higher functions are grossly normal; that her cranial nerves are grossly normal; that her motor examination reviewed normal tone, power and nutrition of the muscles; that sensory examination reveals normal touch, pain, temperature, deep pressure, vibration, tactile vocalization and tactile discrimination; that cerebellar examination is grossly normal (DHS Exhibit B, Pg. 27).

- b. March 29, 2012: states the claimant's general condition is that of fatigued; that she has back, neck and joint pain; that her condition is deteriorating (DHS Exhibit B, Pg. 50).
- c. April 19, 2012: states the claimant has a GAF score of 35 to 45 (DHS Exhibit D, Pg. 4).
- d. April 24, 2012: well-developed, well-nourished and in no cardio respiratory distress; alert and oriented to time, place and person; that she ambulates to the examination room without assistance; she is able to sit comfortably on the examination table without difficulty or evidence of pain; that neurologically, her higher functions are grossly normal; her cranial nerves are grossly normal; that her motor examination reveals normal tone, power and nutrition of the muscles; that sensory examination reveals normal touch, pain, temperature, deep pressure, vibration, tactile vocalization and tactile discrimination; that cerebellar examination is grossly normal (DHS Exhibit B, Pgs. 30-31).

- 6. State Hearing Review Team decision dated August 30, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit D, Pg. 5).

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 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.

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 2009.

Step 2, disability is not denied, except for the mental impairment due to (1) year continuous duration requirement. The medical evidence of record, on date of

application, does establish the Claimant's significant physical functional incapacity to perform basic work activities for the required one year continuous duration, as defined below, based on the *de minimus* standard.

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 burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 416.912(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

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

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

Claimant testified that she can lift/carry 8 lbs; that she can't mentally work due to short-term memory, concentration, and sleeplessness or physically due to muscle pain, no grip strength and numbness and back pain brought on by walking.

The medical evidence of record established the claimant's GAF score of 35-45 in April, 2012. This is considered a severe mental impairment with occupational functioning. DSM-IV (4th edition-revised). Appropriate abnormal physical findings must be shown to persist on repeated examinations, despite therapy for a reasonable presumption to be made that severe impairments will last for a continuous period of 12 months.

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).

The reports of record are mostly diagnostic, treatment and progress reports and do not provide medical assessments of claimant's past mental work limitations for the required duration. Said differently, do the claimant's mental/physical in combination impair the Claimant minimally, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

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

In Step 3, disability is denied. The medical evidence of record for the required duration, does not establish claimant's impairment meets/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 semi-skilled certified nursing assistant for the required one year continuous duration.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and 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.

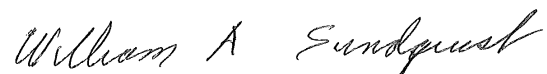
Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in 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, medical disability has not been established at Step 3 and also would not have been established at Steps 4 & 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 not medically established.

Accordingly, SDA 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

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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

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cc:

