

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201274642
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: December 18, 2012
Wayne County DHS #17

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 December 18, 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/SDA application on June 22, 2012 was denied on August 14, 2012 per BEM 260/261, with a hearing request on August 20, 2012.
2. Claimant was age 49, a 12th grade education, and a work experience florist consultant, sales and assistant restaurant manager for serving, bartenders, hostess and cooking (DHS Exhibit A, Page 7)..
3. Claimant's last employment ended in 2002 due to her quitting her job.
4. Claimant alleges disability due to medically diagnosed disorders of severe depression (lack of focus), stress, severe anxiety, and dislocated/broken elbow, severe tendonitis in both arms and insomnia. (DHS Exhibit A, Pg. 35).

5. Medical reports of record state the Claimant on:
 - a. February 10, 2012: is alert, and in no acute distress; that she is oriented x3; and that her extremities exhibit **normal** range of motion (ROM) (DHS Exhibit A, Pg. 29 & 30).
 - b. April 4, 2012: is alert and in no acute distress; that her right elbow has **mild** tenderness located in the area of the medial elbow; that she has a limited ROM secondary to pain; that neurovascular is intact distally; that she was oriented x3; that mood and affect are **normal**; that cognition is **normal**; that process and content are **normal**; that insight and judgment are **normal** (DHS Exhibit A, Pg. 25).
 - c. May 5, 2012: is alert and oriented x3 and in no distress due to pain; that she has a limited ROM of the elbow secondary to pain with diminished flexion, extension, supination and pronation; that her left elbow dislocation has been reduced; that alignment appears near – anatomic; that she has no displaced fracture (DHS Exhibit A, Pgs. 23 & 32).
 - d. May 7, 2012: is alert and oriented x3 and in no acute distress; that left hand has **moderate swelling**; that she has a full ROM in the hand; that she has no numbness or weakness; that her extremities are otherwise negative (DHS Exhibit A, Pg. 20).
 - e. June 12, 2012: has a GAF score of 45 (DHS Exhibit A, Pg. 13).
6. State Hearing Review Team decision dated October 8, 2012 states the Claimant's disorders do not meet/equal a Social Security listing. (DHS Exhibit A, Pg. 35).

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).

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).

Step 1, disability is not denied. The evidence of record established the Claimant has not been engaged in substantial gainful activity since 2002 after quitting her job.

Step 2, disability is not denied. The objective medical evidence of record, on date of application, does establish the Claimant's significant functional physical incapacity, based on the *de minimus* standard, to perform basic work activities, but not mentally 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 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 is unable to do any work mentally; that her disabling discomforts are forgetfulness, not being able to take directions, carrying out instructions and focusing; that she has poor memory and sleep patterns; that physically, she has a burning and pulling sensation in her right elbow; that her right hip/knee gives out with pain; that she has chronic urination problems; she has pain in all joints and is limited to lifting/carrying 5 pounds.

The DHS representative testified that the claimant has been in her presence for one hour and did not have to use the restroom.

...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 medical reports of records are examination, diagnostic, treatment and progress reports and do not provide medical assessments of the Claimant's basic work limitations for the required duration. Said differently, do the claimant's diagnosed disorders 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 evaluation is required to continue.

At Step 2 disability had not been denied, Step 3 would be denied. The medical evidence of record, for the required duration, does not establish claimant's physical impairments meet/equal a Social Security listed impairment.

If disability had not already been denied at Step 2, it would also be denied at Step 4. The medical evidence, 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 florist consultant, for the required one year continuous duration.

If disability had not already been denied at Step 2, it would also be denied at Step 5. The medical evidence of record, on date of application, establishes the claimant has a residual functional capacity, despite her impairments, to perform other work in the national economy for the required one year continuous duration.

Claimant introduced no objective medical evidence of record that she was unable to perform any of her past work under step 4. Therefore, the claimant should be able to perform less strenuous work than her past work, such as sedentary work, as defined below.

At Step 5, the burden of proof shifts to the department to establish that claimant has a residual functional capacity. 20 CFR 416.994(b)(1)(v).

The residual functional capacity is when an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands with 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, the classified jobs as sedentary, light, medium and heavy. These terms are the same meaning as they are 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/ 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).

Under the Medical Vocational Guidelines, rule 201.21, a younger individual, age 49, with a high school education and semi-skilled work history, who is limited to sedentary work is not considered disabled.

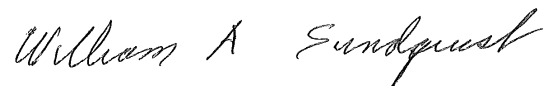
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 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, medical disability has not been established at Step 2 and also would not have been established at Steps 3, 4 and 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, MA-P/SDA denial is **UPHELD**.



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

Date Signed: February 12, 2013

Date Mailed: February 12, 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.

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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/jk

cc:

