

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201245262
Issue No: 2009
Case No: [REDACTED]
Hearing Date: June 21, 2012
Macomb #20

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 Thursday, June 21, 2012. Claimant appeared and provided testimony on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The hearing record was extended 90 days for a 2nd SHRT review of medical reports submitted at the hearing. (Claimant Exhibit A).

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 (3 months retro) MA-P application on September 13, 2011 was denied on March 21, 2012 per BEM 260, with a hearing request on April 2, 2012.
2. Claimant was age [REDACTED] with a [REDACTED] grade education, and work experience as semi-skilled in retail furniture sales, including loading of truck and delivery of the furniture (medical packet, p 7).
3. Claimant's last employment ended in April 2012.
4. Claimant alleges disability due to medically diagnosed disorders of pain in neck, shoulders, hips, ribs, wrists, back, and dyslexia and COPD in combination (Medical Packet, Page 52).

5. Medical reports of record state the Claimant on:
 - a. January 27, 2011 patient is well nourished and in no acute distress; that his neck has a functional range of motion; that his trunk had greater than right SI tenderness with left sciatic notch tenderness with range of motion limited at the extremes of flexion and extension with pain; musculoskeletally he had good range of motion of his bilateral upper extremities and lower extremities at the joints with 5/5 strength; that he had no sensory changes to light touch in the upper or lower extremities (medical packet, p 35).
 - b. March 15, 2011 is well-nourished and in no acute distress; that musculoskeletally he had good range of motion of his bilateral upper extremities and lower extremities at the joints with 5/5 strength (medical packet, p 32)
 - c. March 18, 2011 as impairments expected to last at least 12 months; that during a typical work day claimant experiences frequent pain severe enough to interfere with attention and concentration needed to perform simple work tasks; that he can tolerate moderate work stress; that he can sit at one time for 30 minutes and that he can stand at one time for 1 hour; that he can sit or stand/walk in an 8 hour work day about 2 hours; that he needs to walk around in an 8 hour work period approximately every 60 minutes for a period of 3 minutes; that he needs a job that permits shifting positions at will from sitting, standing or walking; that he needs to take unscheduled breaks during an 8 hour work day one to two times for a 30 minute period; that with prolonged sitting he does not have to elevate his legs; that the claimant does not require an assistive device for standing/walking; that he can occasionally lift/carry 10 lbs; that rarely can he look down (sustained flexion of neck), turn head right or left, look up and hold head in static position; that he can rarely twist, stoop, crouch, climb ladders and climb stairs; that he has significant limitations with reaching, handling or fingering; that he is likely to be absent from work as a result of the impairments of treatment for more than four days per month (medical packet, p 37-41).
 - d. May 4, 2012 is well-nourished and in no acute distress; that he has functional neck range of motion; that he had limitations with rotation to the left on the left hand side and stretching sensation with rotation to the right; that musculosekeletally he had a good range of motion of his bilateral upper extremities and lower extremities at the joints with 5/5 strength; that he had a negative Patrick and negative straight-leg raise; that cranial nerves II-XII were grossly intact; that he had no sensory changes to light touch in the upper and lower

extremities; that his reflexes were 2+ bilateral and symmetric (claimant ex A, p 1-2).

- e. July 1, 2011 is well-nourished and in no acute distress; that neck has a functional range of motion; that musculoskeletally he had good range of motion of his bilateral upper extremities and lower extremities at the joints with 5/5 strength; that he had a negative Patrick and negative straight-leg raise (medical packet, p 28).
 - f. September 7, 2011 grip is slightly decreased bilaterally; that dexterity is intact; that he was able to get on and off the examination table without difficulty; that his gait is normal; that he is able to tandem, tiptoe and heel walk without problems; that he is able to bend and stoop without problem; that he is able to squat and recover; that range of motion of the cervical spine is decreased; that range of motion of the lumbar spine is decreased; that all other joints had normal range of motion; that cranial nerves are intact; that there are no motor or sensory deficits (medical packet, p 9-10).
 - g. September 15, 2011 had a stable condition; and that he would need help with heavy household chores (medical packet, p 23).
 - h. September 15, 2011 is well-nourished and no acute distress; that musculoskeletally he has good range of motion of his bilateral upper extremities and lower extremities at the joints with 5/5 strength (medical packet, p 25).
6. State Hearing Review Team decision dated May 24, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 51).

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 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 2012.

Step 2, disability is not denied. The medical evidence of record, on date of application, does establish the Claimant's significant functional incapacity to perform basic work activities based on the de minimus standard, due to severe physical impairments in combination 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)).

Therefore, the analysis continues.

Otherwise the medical reports of record are examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's physical basic work limitations in order to determine whether or not he has a severe or non-severe impairment for the required duration. Differentially stated, how do the Claimant's medically diagnosed disorders significantly functionally impair the Claimant's ability to perform basic work activities? Do the medically diagnosed disorders impair the Claimant's basic work ability slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The medical evidence of record based on the de minimus standard does establish claimant's severe physical impairment in combination, for the required duration. Therefore, the analysis continues.

Step 3 disability is denied. 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.

Step 4 disability is not denied. The medical evidence of record, on date of application, does establish the Claimant's functional incapacity, to perform any of his past heavy work in the furniture business for the required 1 year continuous duration. Therefore, the analysis continues.

Step 5 disability is denied. The burden of proof shifts to the Department of Human Services (DHS). The medical evidence of record, on date of application, does establish the Claimant had a residual functional capacity (RFC), despite his impairments, to perform any other work in the National Economy for the required one year continued duration.

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment,

we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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.

The medical evidence of record in March 2011 states the Claimant needs a job that permits shifting of positions at will for sitting, standing or walking; and that he has significant limitations with reaching, handling or fingering.

The medical reports of examination on March 18, 2011 state the Claimant's significant physical limitations. But, the other medical reports in January, March, July 2011, and December 2012 do not support the one March 2011 report. The other reports states Claimant is in no acute distress; that he is well-nourished; that his neck has functional ROM; that he has a good ROM of his extremities with a 5/5 strength; that his grip is slightly (not severely) decreased bilaterally; that he has a stable condition; that his gait is normal; and that he would only need help with heavy household chores.

Therefore, not much evidentiary weight is given to the one March 2011 medical report.

The medical evidence of record states the claimant would be limited to no heavy lifting at home.

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The reasonable inference is that claimant has the residual functional capacity for medium, light and sedentary type work as defined below.

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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).

The medical evidence of record, on date of application, does establish the Claimant had a RFC for less strenuous work than to his past work, such as sedentary work, as defined above. Under the Medical-Vocational Guidelines, Rule 201.19, states a younger individual age 46 with a 11th grade education, and semi-skilled work history who is limited to sedentary work is not considered disabled.

Therefore, disability has not been establish at Step 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 denial is **UPHELD**.

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

Date Signed: January 8, 2013

Date Mailed: January 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

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/las

cc:

