

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201245971  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: June 28, 2012  
Ingham 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, an in-person hearing was held on June 28, 2012. Claimant appeared along with his authorized representative, [REDACTED], [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The record was extended 90 days for a 2<sup>nd</sup> SHRT review of medical reports introduced 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 and (3 months retro) application on December 27, 2011 was denied on February 27, 2012 per BEM 260, with a hearing request on April 12, 2012.
2. Vocational factors: Age 47, with a high school education, and history of skilled work as a residential/commercial building painter.
3. Last employment ended 2007.
4. Disability is alleged due to a combination of severe physical impairments of arthritis, muscle problems and hand problems, congestive heart failure and arthritis in shoulders, elbows, hips and knees (Medical Packet, Pgs. 9, 12 & 24).

5. Medical reports of record state the Claimant on:
  - a. September 21, 2011: He fell 20 feet, hit the ground and sustained a splenic rupture, liver laceration, hemorrhagic shock, right femur fracture, left tension hemopneumothorax, left humerus fracture, L1 – L5 transverse process fractures, left C4 vertebrae fracture and multiple bilateral rib fractures (Medical Packet, Pg. 19).
  - b. March 21, 2012: Has the ability to sit, stand, bend, stoop, carry, push, pull, put on clothes, tie shoes, dress/undress, dial a telephone, open a door, make a fist, pick up coin, pick up pencil, write, squat and rise from squatting with assistance, get on and off examining table, climb stairs with assistance; that he was unable to heel and toe walk, that his gait was compensated, that he had a slow shuffling gait; that he had the need for a walking aid; that he had grip strength of 5/5; that there is no evidence of joint laxity, crepitation, or effusion; that straight leg raising is negative; that grip strength is diminished bilaterally; that dexterity is mildly impaired bilaterally; that he could button clothing, tie his shoes and open a door, that he had mild difficulty getting on and off the examination table, that he had moderate difficulty squatting, and was unable to heel and toe walk and hop; that range of motion was normal for the cervical spine, dorsolumbar spine, shoulders, elbows, hips, knees, ankles, wrists, and fingers; that motor strength was reduced to 4/5 in the lower extremities; that tone is normal; that sensory is intact to light touch and pinprick; that he has unsteady station with positive Romberg testing without pronator drift; that there is diminished toe tapping bilaterally; that he has diminished rapid alternating movements and slowed cerebellar functions; that he walks with a guarded gait and mild right limp without the use of his walker; that he does at least in the short term, benefit from the use of his walker for balance control, but he may be able to weaned off this over time; that claimant's possessive overall degree of impairment does appear moderate, but this may be least controllable over time (Medical Packet, Pgs. 25-32).
6. State Hearing Review Team decision dated May 22, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Pg. 33).

### **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).

At Step 1, disability is not denied. The evidence of record established the Claimant has not been engaged in substantial gainful activities since 2007.

Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity to perform basic work activities due to a combination of severe physical impairments for the required one year continuous duration, as defined below.

...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 reports of record are mostly examination, diagnostic and treatment reports. They do not provide medical assessments of Claimant's physical limitations relative to his functional incapacity to perform basic work activities, as defined above. 20 CFR 416.913(c)(1) and (2). Stated differently, does the combination of mental/physical impairment medically impair the Claimant slightly, mildly, moderately (non-severe impairment as defined above) or severely, as described above?

The medical evidence of record in April, 2012, states that Claimant's overall degree of impairment is considered moderate (not severe).

The medical evidence of record does not establish a combination severe physical impairment meeting for 1 year continuous duration requirement. It established a non-severe impairment.

If disability had not already been denied at Step 2, it would also be denied at Step 3. 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.

If disability had not already been denied at Step 2, it would also be denied at Step 4. The medical evidence of record, on date of application, does not establish the Claimant's functional incapacity, despite his impairments to perform any of his past work for a required one year 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, does not establish the Claimant was without a residual functional capacity, despite his impairments to perform any other work in the National Economy for the required one year continuous 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.

**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).

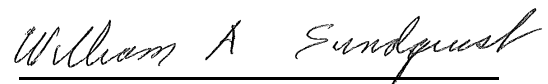
The medical evidence of record, on date of application, does not establish the Claimant was without a residual functional capacity for less strenuous work than his past work, such as sedentary work, as defined above. Under the Medical-Vocational Guidelines, a younger individual, age 47, with a high school education and skilled work who is limited to sedentary work, is not considered disabled.

Therefore, disability has not been established at Step 2 and also has not 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 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

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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

WAS/jk

cc:

