

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201250214
Issue No: 2009
Case No: [REDACTED]
Hearing Date: August 7, 2012
Jackson 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 August 7, 2012. Claimant appeared and provided testimony on her behalf along with [REDACTED], [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [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 application on December 9, 2011 was denied on February 6, 2012 per BEM 260, with a hearing request on May 1, 2012.
2. Claimant was age 29, with a high school or more education, and work experience as unskilled food service, semi-skilled cashier, camp counselor for mentally ill children and skilled adult foster care worker. (Medical Packet, Pgs 33 and 36).
3. Claimant's last employment ended October 2011.
4. Claimant alleges disability due to medically diagnosed disorders of mental impairment problems learning, personality changes, mood swings, emotional outbursts, post traumatic stress disorder feelings of

hopelessness, problems getting along with others, problems being supervised, asthma, back pain, overweight and diabetes (Medical Packet, Pgs. 30 & 75).

5. Medical reports of record state the Claimant on:
 - a. October 22, 2011: Is somewhat lethargic, obese white female who is in mild distress with incisional pain and nausea with dry heaves; that neurologically, she was alert and oriented x3, responding appropriately to all questions; that chest respirations are even and non-labored; that breath sounds are clear without wheezing or crackles; that all extremities move without edema; pulses are intact (Medical Packet, Pgs. 38 & 39).
 - b. November 15, 2011: That she has a GAF score of 40; that claimant was pleasant and cooperative; that she was alert, and oriented x3; that her mood was good; that affect was congruent to the mood; that thought processes was coherent; that speech was normal; that judgment and insight were fair; that cognition was intact and that she had a GAF score of 30 (Medical Packet, Pgs. 42 – 49).
 - c. November 29, 2011: That she has a GAF score of 61 (Medical Packet, Pgs. 69 & 70).
 - d. January 3, 2012: That she is alert and oriented to time, place and person; that she has no physical distress, except that she is overweight.
6. State Hearing Review Team (SHRT) decision dated June 11, 2012 states the Claimant's disorders do not meet/equal a Social Security listing (Medical Packet, Pg. 74).

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 October 2011.

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 severe mental/physical impairment 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)).

The medical evidence of record established the Claimant's GAF scores of 30 and 40 on November 15, 2011, and 61 on November 29, 2011.

30 and 40 are considered a severe mental impairment with occupational functioning, and 61 a mild mental impairment with occupational functioning. DSM-IV (4th edition-revised).

The medical evidence of record does not establish the Claimant's abnormal mental findings have persisted on repeated examination for a reasonable presumption to be medical that a severe mental impairment has lasted or expected to last for at least one continuous year.

The medical reports of record are mostly examination diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's mental/physical basic work limitations in order to determine whether or not she has a severe or non-severe impairment for the required duration. Differently stated, how do the 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 does not establish Claimant's severe mental/physical impairment for the required duration. It establishes 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 Social Security listing for the required duration.

The Listing of impairments describes for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or specific statement of duration is made. For all others, the evidence must show a one year continuous duration. 20 CFR 416.925(a).

Claimant introduced no medical evidence of record by a treating, examining, or non-examining physician that Claimant's impairments do meet the requirements for any Social Security listing. To the contrary, the SHRT medical consultant addressed the

matter and found insufficient medical evidence of a disability under a Social Security listing.

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 her impairments, to perform any of her past work for the required 1 year continuous duration.

At Step 5, the burden of proof shifts. 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 was with a residual functional capacity (RFC), despite her impairments, to perform other work in the National Economy for the required 1 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).

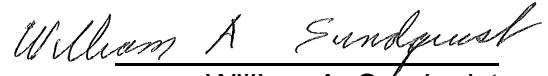
The medical evidence of record, on date of application, does not establish the Claimant was without a RFC for less strenuous work than her past work, such as sedentary work, as defined above. Under the Medical-Vocational Guidelines Rule 201.28, a younger individual age 29, with a high school or more education, and semi-skilled work history, who is limited to sedentary work is not considered.

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

201250214/WAS

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:

