

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201250813
Issue No: 2009
Case No: [REDACTED]
Hearing Date: August 14, 2012
Lapeer 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 Tuesday, August 14, 2012. Claimant appeared with her authorized representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] [REDACTED] [REDACTED].

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

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 September 15, 2011 was denied on January 31, 2012 per BEM 260, with a hearing request on April 13, 2012.
2. Claimant was age [REDACTED] with a [REDACTED] education, and work experience as an unskilled adult caregiver, cashier, and administrative/clerical secretary (DHS Exhibit A, Page 327),
3. Claimant's last employment ended February 20, 2008 due to father's death.
4. Claimant alleges disability due to medically diagnosed disorders of sepsis, diabetes, neuropathy, fibromyalgia, degenerative disc disease and mental problems in combination (DHS Exhibit A, Page 788).

5. Medical reports of record state the Claimant on:
- a. April 27, 2011, has a negative resonance of the thoracic spine; that she has **moderately** severe back pain (not severe) and has undergone two lumbar laminectomy and continues to have back pain without neurological deficit; that in addition to fibromyalgia with continuous generalized body pain she also has diabetes mellitus; and that she **cannot go back to work** (DHS Exhibit A, Pages 17 and 65).
 - b. August 31, 2011, is **not** in pain and distress while laying flat in bed (DHS Exhibit A, Page 68).
 - c. September 19, 2011, is **not** in any distress; has a **big** improvement from her post operative state; that motor exam shows **good** motor strength in both lower extremities; that plantar flexion, dorsi flexion and EHL are all 5/5 at this time; and that **no** sensory deficits were noted (DHS Exhibit A, Page 79).
 - d. December 19, 2011, states the Claimant's GAF score of 55 (DHS Exhibit A, Page 21).
 - e. March 1, 2012, had a **normal** ambulatory status; that she was alert, oriented and fully verbal; that speech was **clear** and that she was **able** to respond to commands; that she is **able** to move all extremities; that she is alert and appears to be in moderate distress; that neurologically she is alert, oriented to person, place and time; that cranial nerves II-XII are **intact**; that she has **no** motor deficits; that she has **no** sensory deficits; that she has **no** extremities tenderness; that her mood and affect are **normal**; that her cranial nerves are grossly intact; that her speech is fluent; that she has full motor exam **without any** sensory **deficit**; that there is **no** tenderness to palpitations along her well-healed incision line (Claimant's Exhibit A, Pages 3-11).
 - f. May 27, 2012, was alert, oriented and **fully** verbal; that she had a **normal** ambulatory status; that she was alert, anxious, and cooperative; that she was **fully** verbal; that her speech is **clear**; that she responds to commands; that she moves all extremities; that she was alert, oriented to person, place and time; that cranial nerves II-XII are **intact**; that there is no motor deficit; that there is no sensory deficit; that there is **no** lower extremities weakness or sensory findings; that she has **normal** muscle strength and tone; that reflexes are equal and symmetrical; that she has no extremities tenderness; that she has a **full** range of motion in all extremities; that she has **no** significant deformity of the lower back; that her mood and affect are **normal** (Claimant Exhibit A, Pages 3-17).

6. State Hearing Review Team decision dated June 5, 2012 states the Claimant's disorders do not meet/equal a Social Security listing (DHS Exhibit A, Page 327).

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.

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 February 20, 2008.

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 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 above. ...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 an M.D. or D.O. or fully licensed psychologist. Medical reports should include:

- Your ability to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling.
- 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).

The medical evidence of record established the Claimant's GAF score of 55 in December 2011. This is considered a non-severe mental impairment with occupational-functioning. DSM-IV (4th edition-revised).

The medical reports of record are examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's mental/physical basic

work limitations. Stated differently, how do the Claimant's medically diagnosed disorders significantly incapacitate her functional ability to perform basic work activities for the required duration. Do the disorders impair the Claimant's ability slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The medical evidence of record in April 2011 states a conclusion that the Claimant cannot go back to work based on moderately severe back pain. To the contrary, the medical evidence in August 2011 states that the Claimant is not in pain; and that in September 2011, December 2011, March 2012 and May 2012 her medical exams were **normal**.

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...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).

Therefore, the Claimant has not sustained her burden of proof to establish a medically severe mental/physical impairment in combination for the required duration.

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.

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 460.925(a).

Claimant introduced no medical evidence of record by a treating, examining, or non-examining physician that Claimant's impairments meet the requirements of 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 as a cashier and secretarial work for the required 1 year continuous duration.

If disability had not already been denied at Step 2, it would also be denied at Step 5. At Step 5, the burden of proof shifts to the Department of Human Services. The medical evidence of record, on date of application, establish the Claimant has a residual functional capacity (RFC), despite her impairments, to perform other work in the National Economy.

...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 Claimant introduced no objective medical evidence of record that she was unable to perform any of her past work under Step 4. To the contrary, the undisputed medical findings of fact #5a through 5f established a non-severe mental/physical impairment; that she was **not in any distress**; that she had **good motor strength** in her lower extremities; that she has no motor deficits; that she has **normal ambulatory** status; that she has **normal** muscle strength; and that she has a **full ROM** in all extremities.

Therefore, the Claimant should have the RFC for less strenuous type of work than her past work as an unskilled adult caregiver and cashier, such as her past sedentary work as an administrative/clerical secretary, and as defined above.

Under the Medical-Vocational Guidelines, Rule 201.27, states a younger individual age 27, with a 12th grade education, and unskilled work history who is limited to sedentary work is not considered disabled.

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.

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

Date Signed: January 7, 2013

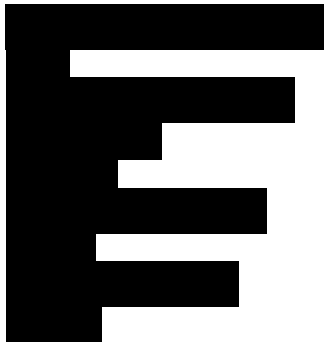
Date Mailed: January 8, 2013

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.

WAS/tb

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