

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201257289
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: August 30, 2012
Kent 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, a telephone hearing was held on August 30, 2012. Claimant appeared and provided testimony on her behalf. 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, (CI Ex 1, 19 pages).

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 November 29, 2011 was denied on May 23, 2012 per BEM 260/261, with a hearing request on May 31, 2012.
2. Claimant was age 51, with a 9th grade education and work experience as an unskilled driver of rental cars to different sites, semi-skilled flower shop phone order taker and bartender, and skilled machine operator.
3. Claimant's last employment ended in 2009 due to her quitting her job.
4. Claimant alleges disability due to medically diagnosed disorders of back condition and depression.

5. Medical reports of record state the Claimant on:
 - a. February 2, 2012 has GAF score of 50; that the claimant is able to understand and follow directions of probably moderate complexity; that treatment of her depression should lessen the impact of that on her ability to work; and that the other barrier to working is her physical pain which, if the claimant's reports are accurate, would make it difficult to do any job consistently (DHS Ex A, p 71-72).
 - b. February 21, 2012 is cooperative in answering questions and following commands; that her immediate, recent and remote memory is intact with normal concentration; that insight and judgment are both appropriate; that there is no evidence of joint laxity, crepitation or effusion; that grip strength remains intact; that dexterity is unimpaired; that she could pick up a pen and open a door; that she had no difficulty getting on and off the examination table, no difficulty heel and toe walking, mild difficulty squatting, and no difficulty standing on either foot; that she has diminished joint space height with lumbar spine straightening between L4-S1; that range of motion are normal for the cervical spine, dorsolumbar spine, shoulders, elbows, hips, knees, ankles, wrists, hands-fingers; that cranial nerves are intact; that motor strength and tone are normal; that sensory is intact to light touch and pinprick; that reflexes are intact and symmetrical; that she walks with a normal gait without the use of an assistive device; that she has mild anterolisthesis at L4-5 which appears to be more the source of her discomfort and that she does not appear to be a surgical candidate at this point; that she is able to sit, stand, bend, stoop, carry, push, pull, button clothes, tie shoes, dress-undress, dial telephone, open door, make a fist, pick up coin, pick up pencil, write, squat and arise from squatting, get on and off examining table, climb stairs (DHS Ex A, p 62-66).
 - c. March 20, 2012 has no evidence of an acute fracture or significant loss of vertebral body height; and that there is mild anterior subluxation of L4 and 5 (CI Ex 1, p 5).
 - d. May 9, 2012 is a well-developed, well-nourished woman in no acute distress; that she is awake, alert and oriented times 3; that cranial nerves II-XII are intact; that cognition and mental status are within normal limits; that evaluation of bilateral upper and lower extremities shows 5/5 motor strength with normal muscle bulk and tone; that sensation is intact to light touch, pinprick and proprioception; that coordination, gait and peripheral vascular evaluations are within normal limits; that there is moderate canal stenosis at L4-5 with associated foraminal narrowing (CI Ex 1, p 9).

- e. June 7, 2012 states her back is without pain and her pain in her hips and legs is significantly improved; that she still has some right hip pain which bothers her and is stronger; that she denies any other weakness; that physical examination shows the wound is well healed; that motor function shows full motor strength in her upper and lower extremities with some decreased sensation across the anterior thigh in the right side; and that her activity should be limited to light duty and no lifting more than 5-10 lbs (CI Ex 1, p 6).
 - f. June 13, 2012 that motor examination shows hesitancy using her right leg due to pain; that her motor exam is intact; that sensation is intact and reflex examination is stable (CI Ex 1, p 7).
 - g. July 18, 2012 states the pain she was having before surgery on June 7, 2012 has improved; that she continues to have back soreness and continues to complain of right hip and right anterior thigh pain which has bothered her since surgery; that she denies any frank weakness; that physical examination shows a well healed wound; her motor strength is 5/5 and sensory exam is stable; that plain films from July 3, 2012 shows satisfactory postoperative appearance with stable spondylolisthesis at L4-5; that she is doing well; and that physical therapy was recommended for lower extremity conditioning and avoiding low back motion until six weeks postoperatively (DHS Ex A, p 78).
 - h. September 5, 2012 states that her pain she was having has improved; that her back is sore; that she does have right hip pain when she sits for too long which requires her to stand up and walk around at which point it feels better; she denies any frank weakness (DHS Ex A, p 79).
6. State Hearing Review Team (SHRT) report dated July 16, 2012 states the claimant's disorders don't meet/equal a Social Security listing (DHS Ex A, p 74).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1

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 2009.

Step 2 disability is not denied. The medical evidence of record, on date of application, establishes the Claimant's significant functional physical incapacity to do basic work activities for the required one year continuous duration, as defined below, but not the mental impairment for 1 year continuous duration.

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 an M.D. or D.O. or fully licensed psychologist. Medical reports would 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).

...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).

Claimant testified the medical reports of record are mostly examination, diagnostic, treatment and progress reports and do not provide medical assessments of Claimant's basic work limitations for the required duration. Except for the physical RFC assessment report of record which shows an ability to perform past work as a relocation driver of car rentals and flower shop phone order taker. Said differently, do the Claimant's diagnosed medical disorders impair the Claimant minimally, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

Claimant testified that she is unable to work due to depression and back pain.

...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 sustained her burden of proof to establish a severe impairment, instead of a non-severe impairment, for the required duration, and the sequential evaluation is required to continue.

Step 3 disability is denied. The medical evidence of record, for the required duration, does not establish Claimant's impairments meet/equal Social Security listed impairment.

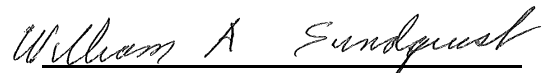
Step 4 is denied. The medical evidence of record, on date of application, does not establish the Claimant's functional physical incapacity, despite her impairments, to perform any of her past work of the require 1 year continued duration.

Therefore, medical disability has not been established at Step 3 or Step 4 by the competent, material and subjective 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.

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

201257289/WAS

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:

