

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201261362
Issue No: 2009
Case No: [REDACTED]
Hearing Date: October 4, 2012
Newaygo 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 October 4, 2012. Claimant appeared with [REDACTED] and [REDACTED] and provided testimony on his 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 1, 18 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 (3 months retro) application on April 5, 2012 was denied on June 20, 2012 per BEM 260, with a hearing request on June 21, 2012.
2. Claimant was age 49, with a 12th grade education, and work experience as an unskilled carpenter work and janitor work, semi-skilled green house work, and skilled work as milk hauler lifting no more than 10 pounds milk hose. (DHS exhibit A, p 7)
3. Claimant last employment ended March 30, 2012 due to medical conditions.
4. Claimant alleges disability due to medically diagnosed disorders of bipolar disorder, depression, anxiety and knee problems. (DHS exhibit A, p 238)
5. Medical reports of record state the Claimant on:

- a. April 11, 2011, has a GAF score of 50 by an LMSW (DHS exhibit A, pg107).
 - b. May 16, 2011, is alert and oriented x 3 (DHS exhibit A, pg 20).
 - c. December 27, 2011, has a GAF score of 55 by an LM SW (DHS exhibit A, Pg. 107).
 - d. May 19, 2012, has a GAF score of 55-60 by an MS LLT (DHS exhibit A, pg 18).
 - e. June 17, 2012, has normal muscle strength; that gait is normal, that speech is coherent; and that thought process is logical (Claimant exhibit 1, pg 13).
 - f. June 18, 2012, is alert and in no apparent distress; the neurologically is cranial nerves II-XII are intact; that gait and station are normal; that alternating hand movements and tip toe walk were all normal; and that he has no history or physical findings prohibiting full activities (Claimant exhibit 1, pgs 9 and 10).
 - g. June 19, 2012, has a GAF score of 20 by a nurse practitioner; that he was oriented x 4; that insight and judgment are marginal at this time; that muscle tone and strength, gait and station are within normal limits (Claimant exhibit 1, pgs 1 and 2).
 - h. June 21, 2012, has a GAF score of 20 upon admission and 55 upon discharge by a M.D. (Claimant exhibit 1, pg 18).
6. State Hearing Review Team (SHRT) decision dated August 3, 2012 states the Claimant's disorders do not meet/equal a Social Security listing (DHS exhibit A, pg 238).

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 March 30, 2012.

Step 2, disability is denied based on a non-severe mental impairment. The medical evidence of record, on date of application, does establish the Claimant's significant physical functional incapacity based on the *de minimus* standard to do basic work activities 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).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

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 416.912(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).

The objective medical evidence of record established GAF scores of 50 in April and December 2011, 55-60 in May 2012, 20 upon admission and 55 upon discharge in June 2012.

The only acceptable scores were by an M.D. of 20 and 55 in June 2012. The prior scores were by a non M.D., D. O. was fully licensed psychologist, such as a nurse.

20 is considered a severe mental impairment with occupational functioning and 55 moderate difficulty (non-severe).

Claimant testified that his knees are okay so long as he is not walking on hard surfaces; and that he has the residual functional capacity (RFC) to lift/carry 50 pounds.

The medical reports of record are mostly examination, diagnostic, treatment and progress reports and do not provide medical assessments of Claimant's physical work limitations for the required duration. Stated 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

Therefore, the Claimant has sustained his burden of proof to establish a severe physical 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 disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's functional physical incapacity, despite his impairments, to perform any of his past work such as a milk truck driver which required lifting/carrying a 10 pound hose for output of milk from farm and reverse at destination, for the required one year continuous duration.

At Step 5, the burden of proof shifts to the department to establish that Claimant does have RFC capacity.

...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).

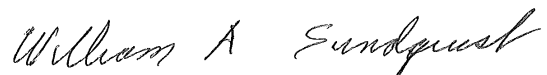
Under the Medical-Vocational guidelines, Rule 201.21, a younger individual age 49, with a high school education and unskilled work history who is limited to sedentary work is not considered disabled

Therefore, medical disability has not been established at Steps 3, 4 and 5 by the competency, 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.

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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/cr

cc:

