

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201261592
Issue No: 2009
Case No: [REDACTED]
Hearing Date: October 2, 2012
Genesee County DHS #2

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 October 2, 2012. Claimant appeared with [REDACTED] which 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 pgs 2 and 3).

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 February/March application on May 17, 2011 was denied on March 27, 2012 per BEM 260, with a hearing request on June 20, 2012.
2. Claimant was age 46, with a high school or more education, and work experience as an unskilled assembly line worker of parts and skilled technician of picture taking and screening of persons for military-base entry, auto mechanic and home health (DHS exhibit A, pg. 97).
3. Claimant's last employment ended March 2010 due to health; in January 2011 he became eligible for Unemployment Compensation Benefits (UCB) with exhaustion in August 2011.
4. Claimant alleges disability due to medically diagnosed disorders of stomach and colon problems, irritable bowel syndrome, post-traumatic stress disorder, acute coronary syndrome and lower back pain.

5. Claimant's disabling complaints are the inability to focus, concentrate, remember information; pain in low back, arms, legs and neck.
6. Medical reports of record state the Claimant on:
 - a. September 20, 2010, his condition is fixable (DHS exhibit A, pg 107)
 - b. October 19, 2010, is alert, oriented, well groomed, appropriate affect without apparent distress; that neurologic examination reveals the claimant to be alert and oriented; that cranial nerves are grossly intact; that motor and sensory systems are grossly intact (DHS exhibit A, pg 28).
 - c. November 12, 2010, is alert, oriented, well groomed, appropriate affect without apparent distress (DHS exhibit A, pg 25).
 - d. February 15, 2011, is alert, oriented well groomed, appropriate affect without apparent distress; that cranial nerves are grossly intact; that motor and sensory systems are grossly intact (DHS exhibit A, pg 21).
 - e. March 30, 2011, that he had a normal general, HEENT, respiratory, cardiovascular, mild tenderness of the abdominal, musculoskeletal, and neuro (Claimant exhibit 1 pg 1).
 - f. June 10, 2011, is alert and oriented x 3; that he has **moderate** tenderness in the right lumbar paraspinals, **mild** on the left; **minimal** tenderness in the lumbar and gluteal muscles bilaterally; that palpitation of the sciatic nerve in the buttocks were negative bilaterally; that claimant had good heel strike, good toe off; that strength testing was 5/5 in bilateral hip flexion, knee flexion, and knee extension; that hamstrings are **moderately** tight bilaterally (DHS exhibit A, pg 47).
 - g. September 15, 2011, is well nourished, well developed, and in no acute distress (DHS exhibit A, pg 18).
 - h. September 15, 2011, is psychiatrically overall oriented to person, place and time and level of consciousness; that overall he has a normal mood and affect. (DHS exhibit A, pg 19).
 - i. October 18, 2011, is alert, oriented x 3; that vital signs are stable, and mental status normal; that he has good motor strength, normal sensory, and bilateral upper and lower extremities with good strength (DHS exhibit A, pg 76).
 - j. August 18, 2011, had a GAF score of 49 (DHS exhibit A, pg 5).

- k. September 26, 2011, has no tenderness of the spine; that he is oriented to time, place and person; that he has normal reflexes in cessation; that cranial nerves are intact; that muscular skeletal his left leg is normal; that right knee has crepitus, that he has minimal restrictions of the right knee movements; that his gait is normal; that he can walk on his toes and heels, that tandem walking is normal (DHS exhibit A, pg 7)
7. State Hearing Review Team (SHRT) decision dated August 6, 2012 states the Claimant's disorders do not meet/equal a Social Security listing (DHS exhibit A, p. 143).

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 engaged in substantial gainful activities since March 2010. Therefore, the sequential evaluation is required to continue to Step 2.

Step 2 disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity to do basic work activities due to severe mental/physical impairments 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 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 by an M.D. or D.O. or fully licensed psychologist. Medical reports should include assessment of your ability to do work related activities such as sitting, standing, moving about, carrying, handling objects, hearing, speaking, and traveling; and 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).

Claimant testified that if he did not have physical pain he wouldn't be physically limited; that he can lift/carry 5-6 pounds..

...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 last work in March 2010. Claimant was an UCB recipient before, on and after date of MA-P application

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. The Administrative Law Judge finds that claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept him from working for a period of 12 months or more. Claimant did last work March 2010. Claimant did receive unemployment compensation benefits with exhaustion in April 2011.

The medical evidence of record establishes Claimant's GAF score of 49 in August 2011. This score is considered a severe 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 made that a severe impairment has lasted or expected to last for at least one continuous year.

The medical reports of record are examination, diagnostic, treatment and progress reports and do not provide medical assessments of Claimant's basic work limitations. Said differently, do the Claimant's mental/ physical impairments in combination impair the Claimant minimally, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

Therefore, the Claimant has not sustained his burden of proof to establish a severe impairment, instead with a non-severe impairment, for the required duration, and the sequential evaluation is required to continue.

If Step 2 disability had not been denied, Step 3 would also be denied. The medical evidence of record, for the required duration, does not establish Claimant's impairments meet/equal Social Security impairment.

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 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 his impairments, to perform any of his past work such as a skilled technician performing screening operations of people wanting to enter a military base for the required 1 year continued duration.

Step 5, the burden of proof shifts. If disability had not already been denied at Step 2, it will also be denied at Step 5. The medical evidence of record, on date of application, establish that the Claimant has a Residual Functional Capacity (RFC), despite his impairments, to perform other work in a National Economy such as sedentary work.

Claimant introduced no objective medical evidence on record that he could not perform any of his past work. Therefore, he should be able to perform less strenuous work, such as sedentary work.

...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).

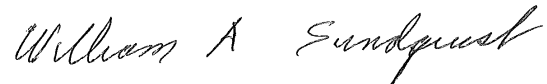
Under the Medical-Vocational guidelines, Rule 201.21 a younger individual age 46, with a high school or more education and a skilled work as a military base screener, who is limited to sedentary work is not considered disabled.

Therefore, medical disability has not been established at Step 2 and also would not have 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: April 9, 2013

Date Mailed: April 9, 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

201261592/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/cr

cc:

