

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201265357
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: October 23, 2012
County: Saginaw

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 23, 2012. Claimant appeared along with her witness, [REDACTED] and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

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 SDA application on September 16, 2011, was denied on April 20, 2012 per BEM 261, with a hearing request on July 13, 2012.
2. Claimant was age 36, with a high school and college degree, and work experience as a semi-skilled census taker supervisor, adult caregiver, and unskilled retail sales perform and cashier.
3. Claimant's last employment ended July 13, 2012 due to motor accident.
4. Claimant alleges disability due to medically diagnosed disorders of degenerative disc disease, vertical heterophoria, migraines, neuropathy, traumatic brain injury, depression, panic and post-traumatic stress disorder (DHS Exhibit A, Page 507).
5. Medical reports of record state the Claimant on:

- a. June 2, 2011, has not been in any acute distress; that she was present and cooperative with good eyesight; that psychomotor behavior was normal without any voluntary movements; that affect was dysthymic and moderately anxious with no irritability and good reactivity; that thought process was logical, organized, goal oriented; that attention and concentration was intact; that memory was intact; that executive function was intact; that insight and judgment was fair; and stated a GAF score of 50 (DHS Exhibit A, Pages 58 and 61).
- b. June 15, 2011, is alert and oriented x3, and in no apparent acute distress; that neurologically the III-XII were tested and grossly intact; that gait, tandem, and ROM were within normal limits (DHS Exhibit A, Page 90).
- c. July 7, 2011, had a normal MRI of the cervical spine with some mild degenerative ridges and the central bulge disc material at C5-6 that is not large to cause significant pathology; that there is a small broad-central disc herniation at L4-5 which does not appear to be large enough to cause significant pathology; that there is no significant ridging, disc herniation, or stenosis demonstrated throughout the lumbar spine; that she is alert and oriented x3 with clear and coherent speech; that cranial nerves II-XII are grossly intact; that muscle strength is 5/5; brain stem auditory evoke responses (DHS Exhibit A, Pages 294-302).
- d. July 26, 2011, her performance on the neurological evaluation is general within normal limits for an individual of her age and education; that she is exhibiting some very minimal cognitive difficulties, which I suspect are primarily related to her pain, dizziness, and headaches; that she does not appear a significant brain injury from her accident; her subjective cognitive complaints she is primarily experiences are related to her current state, depression, and anxiety rather than a brain injury (DHS Exhibit A, Pages 502-503).
- e. July 29, 2011, that her problems are mostly related to undiagnosed ear disease; that on physical examination, the external auditory canals are clear and the tympanic membrane (DHS Exhibit A, Page 466).
- f. August 4, 2011, her standing balance was normal with eyes open or closed for 30 seconds; that her leg stance for 30 seconds on either leg demonstrated normal balance; that gait pattern was slow and cautious; that gait when velocity was steady; that when gait was combined with horizontal head motion there was mild path deviation or loss of balance; that when gait with vertical

head motion there was no path deviation or loss of balance; that 180 degrees pivot turns were slow but steady; that she was able to step over and around obstacles without loss of balance or hesitation; that she was able to rise from chair on first attempt with minimal use of arms demonstrative of normal balance upon rising; that the test of dynamic visual acuity did not provoke dizziness; that she has moderate severe motion sensitivity and postural insecurity in deconditioning; that she has chronic subjective dizziness exacerbated by anxiety and deconditioning; that she has good potential for improvement with vestibular rehab (DHS Exhibit A, Page 258).

- g. August 11, 2011, her performance on the neuropsychological evaluation is generally within normal limits for an individual of her age and education; and that she is exhibiting some very minimal cognitive difficulties, which I suspect are primarily related to pain, dizziness, and headaches (DHS Exhibit A, Page 504).
 - h. September 8, 2011, has a GAF score of 50 (DHS Exhibit A, Page 64).
 - i. October 5, 2011, she appears to be well-developed, well-nourished and in no acute distress; and that tympanic membrane and conjunctive are clear bilaterally (DHS Exhibit A, Page 160).
 - j. October 25, 2011, has a GAF score of 50 (DHS Exhibit A, Page 187).
 - k. November 3, 2011, is alert and oriented #3 with clear and coherent speech; that cranial nerves II-XII are grossly intact; that muscle strength 5/5 with exception of finger extension 4/5; that gait is mildly hesitant; that she was able to tandem walk (DHS Exhibit A, Page 306).
 - m. January 6, 2012, her condition is deteriorating (DHS Exhibit A, Page 17).
6. State Hearing Review Team decision dated August 30, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 507).

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).

Facts above are undisputed.

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.

...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 416.912(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 July 13, 2012.

Step 2, disability is not denied. The medical evidence of record, on date of application, establish the Claimant's significant physical functional incapacity based on de minimus standard to do 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 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).

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. 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?

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, on date of application, does not establish the Claimant's impairments meet/equal a Social Security listing for the required duration.

At Step 4 disability 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 such as semi-skilled census-taker supervisor, and unskilled cashier and retail sales person for the required one year continuous duration.

At Step 5, the burden of proof shifts to the department to establish that Claimant does have residual functional capacity. 20 CFR 416.994 (b)(1)(v).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated...20 CFR 416.945 (a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and 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 lbs 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).

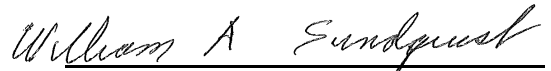
Under the Medical-vocational guidelines, Rule 201.27, a younger individual age 36, with a high school education and an unskilled work history who is limited to sedentary work is not considered disabled.

Therefore, medical disability has not been established at Step 3, and also would not have been established at Steps 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, 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

201265357/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/tb

cc:

