

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201265429  
Issue No: 2009; 4031  
Case No: [REDACTED] 4  
Hearing Date: October 17, 2012  
Jackson 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 17, 2012. Claimant appeared and provided testimony on her behalf. 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 MA-P/SDA application on November 21, 2011 was denied on July 3, 2012 per BEM 260/261, with a hearing request on July 16, 2012.
2. Claimant was age [REDACTED] with an [REDACTED] grade education, and unskilled work experience as assistant cook/dishwasher and packaging of 10 pound lawnmower seats.
3. Last employment ended March, 2012 due to medical reasons. He is currently working part-time – 2 hours a day/10 hours per week carrying a sign for advertising.
4. Claimant alleges disability due to medically diagnosed disorders of chest pain, shortness of breath, substance abuse and degenerative disc disease (DHS Exhibit A, Pg. 149).

5. Medical reports of record state the Claimant on:
  - a. April 27, 2011: He has progression of lumbar spine degeneration; that multi-level degeneration remained unchanged; and that he has no herniation (DHS Exhibit A, Pgs. 8 & 10).
  - b. April 27, 2011: He has stable advanced cervical spine degeneration changes; that he has no acute abnormalities (DHS Exhibit A, Pg. 39).
  - c. July 14, 2011: Has no apparent distress; that he is well-nourished and well-developed; that his chest can be described as symmetric (DHS Exhibit A, Pg. 28).
  - d. October 12, 2011: He has normal alignment without coronal or sagittal deformity or in balance; that he has a normal range of motion; that he is an adult with lumbar degenerative scoliosis with stenosis symptoms (DHS Exhibit A, Pg. 16).
  - e. November 25, 2011: He is in no apparent distress; that he does not appear acutely ill; that he is overall well-developed, well-nourished; that he has unlabored respirations, could reach sounds, no audible rales, rhonchi, or wheezes; that his lower back exam shows no specific areas of boney point tenderness; that there is mild to moderate lumbosacral paravertebral spasm on the left side of the lower back; that lower back exams shows good range of motion with normal flexion and extension in good rotation of both right and left; that there is no evidence of lower extremity weakness; that he is able to dorsi-flex ankle and plantar flex with good strength; that there are no specific sensory findings (DHS Exhibit A, Pg. 70).
  - f. December 7, 2011: He has strong and symmetric hand grips; that he is in no acute respiratory distress; that he has a normal non-labored respiration; that he is well-developed, well-nourished and in no acute distress; that he had a normal lower extremity exam; that he had no contractures on limitation of movement; that he has no joint laxity; that he has no significant edema; that he had adequate strength (DHS Exhibit A, Pgs. 81 & 82).
  - g. December 10, 2011: that his breath sounds are normal, with good equal air movement, that he had no wheezing or abnormal breath sounds; that he had full range of motion in all extremities; that he had tenderness in the cervical and sporadic spine minimally (DHS Exhibit A, Pgs. 45 & 46).

6. State Hearing Review Team decision dated August 29, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Pg. 149).

### **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 Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 denied. The evidence of record established the Claimant has not been engaged in substantial gainful activities since March, 2012 except for his current part-time job with earnings under the table.

Step 2, disability is not denied. The medical evidence of record, on date of application, establish the Claimant's significant functional physical incapacity, based on the *de minimus* standard, 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 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 Claimant testified that he can't lift/carry 10 to 15 pounds without pain; that he cannot do his past work due to pain in the lower back down the right leg and neck down to left shoulder; and that he is currently working at a pizza restaurant 2 hours per day, 10 hours per week, walking and carrying an advertising sign on the outside premises.

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 a 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 incapacity, despite his physical impairments to perform any of his past work as a dishwasher.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

Therefore, medical disability has not been established at Steps 3 & 4 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/SDA denial is **UPHELD**.

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

Date Signed: January 4, 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.

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

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/jk

cc:

