

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

IN THE MATTER OF:



Reg. No: 201266554
Issue No: 2009
Case No:
Hearing Date: October 18, 2012
Barry 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 18, 2012. Claimant appeared and provided testimony on her behalf. Participants on behalf of the Department of Human Services (Department) included and .

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 application on April 23, 2012 was denied on July 13, 2012 per BEM 260, with a hearing request on July 24, 2012.
2. Claimant was age 55, with a 12th grade education, and a work experience as a state Certified Nurses Aid (CNA), personal care for the elderly assisting with activities of daily living, preparation of hospital room for colonoscopy patients, assisting with cleaning and sterilization of medical instruments (DHS Exhibit A, Pg. 11).
3. Claimant's last employment ended March 29, 2012 due to medical reasons.
4. Claimant alleges disability due to medically diagnosed disorders of chest and arm pain, weakness and fatigue, difficulty walking and standing, stress and shortness of breath (DHS Exhibit A, Pg. 9)

5. Medical reports of record state the Claimant on:
 - a. March 29, 2012: Her extremities appeared normal with a normal range of motion; that neuro/psych mood/affect were all normal; that she is alert and oriented x3; that her motor and sensation are normal (DHS Exhibit A, Pg. 72)
 - b. March 29, 2012: She is well-developed and in no acute distress; that her breathing is unlabored and chest expansion is equal without accessory muscle use; that breath sounds are clear to auscultation without wheezes, rhonchi or rales; that she has a regular heart rate and rhythm with normal S1, S2; that there are no murmurs, gallops, or rubs; that neurologically she is alert and oriented to person, place and time without any focal neurological deficits (DHS Exhibit A, Pg. 35).
 - c. March 30, 2012: She had a non acute coronary syndrome with duration of less than six hours; that she has a normal coronary angiography; that there was no evidence of significant coronary artery disease (DHS Exhibit A, Pg. 63).
 - d. March 30, 2012: She had a normal coronary angiography; and that there was no evidence of significant coronary artery disease (DHS Exhibit A, Pg. 66).
 - e. May 3, 2012: She is alert and awake; that she answers questions appropriately with normal mood and affect; that her lung sounds are very clear, without any wheezing or crackles; that chest wall motion is symmetrical; that extremities show no edema, cyanosis or clubbing; that there is no focal neurological deficit (DHS Exhibit A, Pg. 152).
 - f. June 11, 2012: She is alert and awake, answers questions appropriately with normal mood and affect; that her heart has regular rate and rhythm; that lungs sound clear without any wheezing; that extremities show edema; she has no focal neurological deficit (DHS Exhibit A, Pg. 155).
 - g. June 21, 2012: Is well developed; that respiratory chest can be described as symmetric; that lungs are clear to auscultation; that respiratory effort is normal; that in the cardiovascular system she has a regular rate and rhythm with no murmurs, gallops or rubs; that claimant is oriented to time, place, person and situation (DHS Exhibit A, Pgs. 149-150).
6. State Hearing Review Team decision dated September 7, 2012 states the Claimant's disorders do not meet/equal a Social Security listing (DHS Exhibit A, Pg. 157).

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 29, 2012.

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

Claimant testified that she is limited to lift/carry 5 pounds; that she has a breathing problem that restricts her walking and standing ability; that she has back and hip pain; and that she cannot do her past work or another light type work.

The medical reports of record are diagnostic, treatment and progress reports and do not provide medical assessments of Claimant's past work limitations for the required duration. Said differently, do the Claimant's diagnosed medical disorders impairments 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.

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At Step 3, the medical evidence on the record for the required duration, does not establish claimant's impairments meet/equal a Social Security listing impairment.

At Step 4, the medical evidence of record, on the date of application, does not establish the claimant's functional incapacity, despite her impairments to perform any of her past work; such as a state CNA for the required one year continuous duration.

Therefore, medical disability has not been established at Steps 3 and 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 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

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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

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cc:

