

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201268411
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: November 20, 2012
County DHS: Oakland (02)

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 November 20, 2012. Claimant appeared and provided testimony on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED]. Hearing record was extended 90 days for a second SHRT review of medical reports submitted at the hearing. (Claimant Exhibit 1).

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 April 18, 2012, was denied on July 24, 2012, per BEM 260/261, with a hearing request on July 30, 2012.
2. Claimant was age 35, with a 12th grade education, and semi skilled work in heavy exertional landscaping and janitorial work.
3. Claimant's last employment ended in 2008 due to a motorcycle accident.
4. Claimant alleges disability due to medically diagnosed disorder of left side of body nerve damage secondary to motorcycle accident.
5. Medical reports of exams state the Claimant on:
 - a. January 12, 2012, Claimant has no evidence of acute fracture or malalignment of the sacrum and coccyx; and that the sacroiliac joints are preserved. (DHS exhibit A, Page 48).

- b. February 29, 2012, Claimant is well built, well nourished and in no acute distress; that she has moderate restriction of range of motion of the left shoulder and unable to raise her arm above chest level; that she has mild restriction of range of motion of the right shoulder, that she has moderate restriction range of the cervical spine with paracervical tenderness, more on the left than on the right; that she has moderate restriction of range of motion of the lumbar spine and pain during bending; that her gait is slow but normal; that her cranial nerves III-XII are grossly normal; that tendon reflexes are symmetrical; that her power is 5/5 overall; that she has a normal range of motion of the cervical spine, lumbar spine, shoulders, hips, knees, ankles, wrists and hand-fingers; that she is able to sit, stand, button close, dress-undress, dial telephone, open door, make a fist, write, get on and off cable, but unable to bend, stoop, carry, push, pull, tie shoes, pick up coin, pick up pencil, squat and arise from squatting, and climb stairs; that her gait is stable and within normal limit. (DHS Exhibit A, Pages 7-12),
6. SHRT report dated September 24, 2012, states the Claimant's disorders don't meet/equal a Social Security listing. (DHS Exhibit A, Page 82).

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).

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 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 activity since 2008.

Step 2 disability is not denied. The medical evidence of record, on date of application, establishes the Claimant's significant functional physical incapacity, based on the de minimus standard, to do basic work activities for the required 1 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 416.920(c)).

The burden of proof is on the Claimant to establish a medical disability as defined above...20 CFR 416.912(a).

Claimant testified that she cannot do any work due to chronic left body side pain from a motorcycle injury 4 years ago; and that she is limited to carrying/lifting 5 pounds.

GAINFUL WORK

Clients who are working and performing substantial gainful activity (SGA) are not disabled regardless of medical condition, age, education or work experience. (20 CFR 416.920(b)).

Therefore, the Claimant has sustained her burden of proof to establish a severe physical impairment instead of a non-severe impairment, for the required duration. Therefore the sequential evaluation is required to continue to the next step.

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 listing.

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 janitorial work.

The medical reports of record are examinations, diagnostic, treatment and progress reports and do not provide medical assessments to the Claimant's past work limitations.

If disability had not already been denied at Step 4, it would also be denied at Step 5. At this step the burden of proof shifts to the Department. The medical evidence of record, establishes that the Claimant had a residual functional capacity, despite her impairments, to perform other work in the national economy.

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 of the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluation....20 CFR 416.945(a).

To determine the physical demand (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 involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledges, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing as often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally as sedentary criteria are met...20 CFR 416.967(a).

Under the medical-vocational guidelines, Rule 201.27, a younger individual age 35, with a high school education and an unskilled work history was limited to sedentary work is not considered disabled.

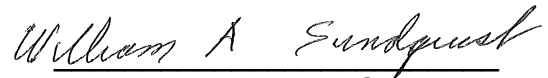
The Department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 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 proceeding 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 & 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 that disability was not medically established.

Accordingly, MA-P/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.

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

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cc:

