

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201268859
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 29, 2012
County: Kalamazoo

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 November 29, 2012. Claimant appeared with her authorized representative, [REDACTED], [REDACTED] and provided testimony on her 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).

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 retro) application on March 14, 2012, was denied on May 4, 2012 per BEM 260, with a hearing request on July 27, 2012
2. Claimant was age [REDACTED] with a 9th grade education, and work experience as an unskilled as a cashier, machine operator, and motel/hotel housekeeper.
3. Claimant's last employment ended in 2005 due to medical reasons.

4. Claimant alleges disability primarily due to medically diagnosed disorders of arthritis, back pain, asthma, hiatal hernia repair, neuropathy, learning disability, mood disorder, post-traumatic stress disorder and personality disorder (DHS Exhibit A, Page 171).
6. Medical reports of exams state the Claimant on:
 - a. July 22, 2011, has the ability to sit, stand, bend, stoop, carry, push, pull, button clothes, tie shoes, dress/undress, dial telephone, open door, make a fist, pick-up coin, pick-up pencil, write, squat and arise from squatting, get on and off examining table, climb stairs; that she is well developed, well nourished, in no obvious distress; that she was alert, well-oriented, and cooperative; that affect and effort were all **appropriate**; that her immediate, recent and remote memory was **intact** with normal **concentration**; that her insight and judgement were both **appropriate**; that there is no evidence of joint laxity, crepitance, or effusion; that grip strength remains **intact**; that dexterity is **unimpaired**; that she could pick-up a coin, button clothing, and open a door; that she had **no difficulty** getting on and off the examination table, **no difficulty** heel and toe walking, and **no difficulty** squatting, and **no difficulty** hopping; that range of motion of the joints were **normal** for the dorsolumbar spine and hips; that cranial nerves are **intact**; that motor strength was **normal** and tone appeared **normal**; that sensory is **intact** to light touch and pinprick; that reflexes are intact and symmetrical; that the ROMBERG testing was **negative**; that she walks **with a normal** gait without the assist of an assistive device; and neurological exam was **unremarkable** (DHS Exhibit A, Pages 16-19).
 - b. January 9, 2012, has a stable condition (DHS Exhibit A, Page 95).
 - c. February 29, 2012, is doing better clinically; that her pain is **controlled**; that she feels things are coming back slowly (DHS Exhibit A, Page 130).
 - d. June 4, 2012, is well nourished and in no acute distress (Claimant Exhibit 1, Page 35).
 - e. September 23, 2012, is in no acute distress (Claimant Exhibit 1, Page 21).

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 416.912(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 establishes the Claimant has not engaged in substantial gainful activities since 2005.

Step 2 disability is not denied. The objective medical evidence of record, on date of application based on the *de minimus standard*, does establish the Claimant's significant functional physical incapacity 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 based on the 5 step process above. ...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).

Claimant testified that she cannot lift/carry over 3 pounds; that she is limited to 1 hour of standing while doing dishes; that she has chronic pain in mid/low back and hips bilateral; that her diagnosed mental disorders are secondary to primary to physical disorders are not disabling.

...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).

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 objective medical evidence of record, for the required duration, does not establish the Claimant's impairments meet/equal a Social Security listing. Therefore, the sequential evaluation will continue to the next step.

Step 4 disability is denied. The objective 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 (Findings of Fact #2).

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 to establish that the Claimant does have a RFC.

The RFC 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 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 Step 4, Claimant introduced no objective medical evidence of record that she was without a RFC for any of her past jobs. Therefore, this Administrative Law Judge (ALJ) finds that the Claimant has the RFC for less strenuous work, than her past work, such as sedentary type work, as defined above.

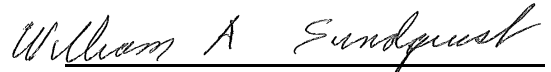
Under the Medical-Vocational Guidelines, 201.18, a younger individual, age 46, with a 9th grade education and unskilled work history who is limited to sedentary work is not considered disabled.

Therefore, medical disability has not been established at Steps 2, and also would not be 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 that 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 17, 2013

Date Mailed: April 17, 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
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

WAS/tb

cc:

