

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201277215
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 20, 2012
County: Ottawa County DHS #70

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 December 20, 2012. Claimant's representative, [REDACTED], appeared and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED].

The hearing record was extended for 90 days for a 2nd SHRT review of medical reports submitted at the hearing (Claimant Exhibit 1, approximately 100 pages).

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 applied for MA-P on March 29, 2012, was denied on July 27, 2012 per BEM 260, with a hearing request on September 1, 2012.
2. Claimant was age 41, with a GED, and a semi-skilled machine operator (Claimant was absent from the hearing to testify to his other past 15 year job), (DHS Exhibit A, Page 14).
3. Claimant's last employment ended in August 2011.

4. Claimant alleges disability due to medically diagnosed disorders of bipolar, depression and back pain.
5. Medical reports of examinations state the Claimant on:
 - a. January 23, 2012: is oriented to time, place, person and situation (Claimant Exhibit 1, Page 90).
 - b. February 2, 2012: has **mild** disc bulge at L4-L5 and L5-S1 levels (Claimant Exhibit 1, Page 80).
 - c. February 9, 2012: has a GAF score of 49 (DHS Exhibit A, Page 26).
 - d. February 21, 2012: that he appears to be in **mild** discomfort; that his immediate, recent and remote memory is **intact** with **normal** concentration; that his insight and judgment are both appropriate; that there is no evidence of joint laxity, or effusion; that there is tenderness to his right side at L4-S1 disc inner space; that there is pain that radiates into the right leg at 40° degrees; that straight leg raising is **negative** to the left; that grip strength remains **intact**; that dexterity is **unimpaired**; that he could pick-up a coin and open a door; that he had no **difficulty** getting on and off the examination table, **mild** difficulty heel and toe walking, **mild** difficulty squatting, and **mild** difficulty standing on either foot; that range of motion was **normal** for dorsolumbar spine; that cranial nerves are **intact**; that motor strength and tone are **normal**; that the ROMBERG test is **negative**; that he walks with a **mild** right limp without the use of an assistive device; that he did have a relatively stable gait and does not require the use of an assistive device; that his degree of impairment does appear **mild** but declining and that his prognosis is fair if left untreated; that he had 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, and climb stairs; that he could walk on heels and toes; that his gait was stable within normal limits; that he does not need a walking aide; that his grip strength was 5/5 (DHS Exhibit A, Pages 29 to 34).
 - e. March 29, 2012: his mental condition is **normal**; and that his condition is **improving** (DHS Exhibit A, Page 21).
 - f. May 8, 2012: his overall rehabilitation potential is good and that the expected length of his episode of skilled therapy services required

- to address his condition is estimated to be four weeks (Claimant Exhibit 1, Page 2).
- g. May 10, 2012: is in severe discomfort from forward bending, mobility/transfers, and sitting; that he is moderately in discomfort from lifting and squatting; and that he is mildly in discomfort from standing (Claimant Exhibit 1, Page 8).
 - h. June 11, 2012: from symptoms of discomfort from lifting heavy objects; that he has moderate symptoms/discomfort from forward bending, mobility/transfers and sitting; that he has mild symptoms of discomfort from squatting and standing (Claimant Exhibit 1, Page 47).
 - i. June 29, 2012: has symptoms/discomfort moderately in forward bending, lifting heavy objects, mobility/transfers and sitting; and that he has mild symptoms/discomfort from squatting and standing (Claimant Exhibit 1, Page 65).
 - j. June 29, 2012: that he has slight symptoms of discomfort with forward bending and mobility/transfers; that he has no symptoms of discomfort for lifting, sitting, squatting and standing (Claimant Exhibit 1, Page 67).
 - k. September 4, 2012: has moderate symptoms/discomfort from forward bending, lifting objects, mobility/transfers, sitting; and that he has mild/discomfort from squatting and standing (Claimant Exhibit 1, Page 71).
 - l. September 4, 2012: that he has slight symptoms/discomfort from bending and mobility/transfers; that he has no symptoms/discomforts of the lifting, sitting, squatting and standing (Claimant Exhibit 1, Page 72).
- 6. State Hearing Review Team decision (SHRT) dated October 25, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Page 105).
 - 7. Claimant was absent from the hearing due to incarceration.

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).

The burden of proof is on the claimant to establish disability by the objective medical evidence that he/she is disabled in accordance with the 5 step sequential evaluation.20 CFR 416.912(a). At Step 5 the burden of proof shifts to the Department of Human Services (DHS).20 CFR 416.994(b)(1)(v).

Acceptable medical sources about your impairments are by an M.D. or D.O. or fully licensed psychologist. ...BEM 260.

Medical Reports from an acceptable medical sources from above should include in cases of mental impairment your ability to reason or make occupational adjustments.20 CFR 416.913(a) & (b)(1) & (2).

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).

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).

At Step 1, disability is not denied. The evidence of record established the Claimant has not been engaged in substantial gainful activities since August 2011.

The Claimant was absent from the hearing. This Administrative Law Judge (ALJ) had to rely on his wife's testimony for Step 1 of the analysis. Also, this ALJ did not have Claimant's testimony regarding his disabling mental/physical symptoms. Therefore, the sequential evaluation is required to continue to the next step.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity, based on the de minimus standard, to do basic work activities due to a severe mental/physical incapacity to perform basic work activities for a one (1) 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).

The medical reports of record are mostly examination, diagnostic, treatment and progress reports and do not provide medical assessment of Claimant's basic work limitations for the required duration. Said differently, do the Claimant's diagnosed medical disorders impair him minimally, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The objective medical evidence of record establishes the Claimant's GAF of 49 in February 2012. This is considered a severe mental impairment with occupational-functioning. DSM IV (4th edition-revised). This score is not supported by medical evidence of record in February 2012 which states the Claimant had the ability to cooperate in answering questions and following commands, that his immediate, recent and remote memory was **intact**; with **normal** concentration; that his insight and judgment were both appropriate. The medical evidence in March 2012 states the Claimant's mental abilities are **normal**.

Therefore, this ALJ does not give evidentiary weight to the score above. Even assuming a severe mental impairment had been established, there was no objective medical evidence of record that it had lasted or was expected to last for the required one year continuous duration.

The objective medical evidence of record establishes the Claimant's severe physical impairment in January 2012. Thereafter, his physical condition progressively improved for almost the last 8 months leading up to September 2012. The medical evidence of record states the Claimant's functional symptoms of discomfort were **moderate** (non-severe) for forward bending, lifting heavy objects, mobility/transfers, sitting and **mild** for squatting and standing.

The neurologic and orthopedic report in February 2012 supports the Claimant's ability to perform basic physical work activities in February 2012 (findings of facts #5).

Administrative law judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals. Delegation of Hearing Authority, July 13, 2011, per PA 1939, Section 9, Act 280.

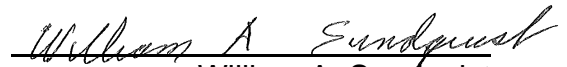
Therefore, the sequential evaluation is required to stop at Step 2.

Claimant has not sustained his burden of proof to establish disability, as defined above, 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** and so ORDERED.


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

Date Signed: April 24, 2013

Date Mailed: April 25, 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:

