

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201278260
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 9, 2013
County: Calhoun

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 January 9, 2013. Claimant appeared along with authorized hearing representative, Richard Hanson 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 application on May 24, 2012, was denied on July 30, 2012 per BEM 260, with a hearing request on September 18, 2012
2. Claimant was age 54, with a college degree, and unskilled/skilled work history as a Director/Counselor educating children, age range from 13 to 18 years, for entering society, Department of Human Services (DHS) worker for the state of Tennessee, auto parts worker, and restaurant kitchen help.
3. Claimant alleges disability due to medically diagnosed disorders of arthritis, degenerative joint disease (DJD), degenerative disc disease

(DDD), asthma, hypertension, bi-polar , thyroid, Hepa titis C and carpal tunnel syndrome (CTS) (DHS Exhibit A, Page 207).

4. Medical reports of examinations state the Claimant on:
 - a. April 2012, had suffered fracture C1 following a fall (DHS Exhibit A, Page 187).
 - b. April 6, 2012, is limit ed to overhead lifting and strenuous activity until follow-up (DHS Exhibit A, Page 133).
 - c. June 5, 2012, is c ooperative in answering questions and following commands; that mental status is **normal**; that she appears in **mild** discomfort; that she stills has he r hard collar in place that was not removed due to her injuries; that her recent and remote memory is intact with **normal** concentration; that her insight and judgment is **appropriate**; that there is no ev idence of joint laxiety, crepitanace or effusion; that grip strength remains **intact**; that dex tery is **unimpaired**; that she could pickup a coin, button clothing and open a door; that Tinel's sign is **negative**; that she had **mild** diffic ulty getting on and off the examination table, **mild** difficulty heel and toe walking, **mild** squatting, and was unable to hop, because of immobilization of her neck; that range of motion wa s **normal** for dorsolumbar spine, s houlders, elbows, hips, knees, ankles, wrists , hands-fingers; that cranial nerves are **intact**; that motor strength is **intact**; that muscle tone was **normal**; that sensory is **intact** to light touch and pinprick; that Romburg testing is **negative**; that she walks with guarded gait wit hout the use of an assistive device; that she did have **mild** difficulty performing orthopedic maneuvers mostly because of immobiliz ation of her neck; that range of motion of the cervical spine was not obtained due to her collar; that she did have **well preserved** range of motion and grip strength; that she did have some mild bronchogenic breath sounds today , but did not appear dyspneic; that Claimant's **overall degree** of impairment is **mild to moderate**, but potentially remedial long-term (DHS Exhibit A, Pages 193-196).
 - d. June 24, 2012, has a GAF score of 52 (DHS Exhibit A, Page 199).
6. State Hearing Review Team (SHRT) decision dated November 15, 2012, states the Claimant's di sorders do not meet/equal a Social Security listing (DHS Exhibit A, Page 207).

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 established the Claimant has not been engaged in substantial gainful activities since April 2007.

Step 2 disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional mental/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).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

Claimant testified that it would be very difficult for her to do any work due to her medical condition; that mentally she has difficulty sleeping and no motivation to do anything; that physically she is limited to lifting/carrying one gallon of milk; that she has chronic tiredness, pain in right side (liver area), and knees; and that she has intermittent pain/numbness in wrists.

...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).

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

Therefore, the Claimant has not sustained her burden of proof to establish a severe mental/physical impairment, instead of a non-severe impairment, for the required duration. Therefore, the sequential evaluation is required to stop.

If Step 2 disability had not been denied, Step 3 would also be denied. The medical evidence of record, for the required duration, does not establish the Claimant's impairments meet/equal Social Security listed impairment.

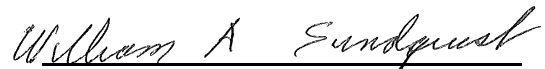
If Step 2 disability had not been denied, it would also be denied at Step 4. The medical evidence of record, on date of application, does not establish the Claimant's functional mental/physical incapacity, despite her impairments, to perform any of her past work, such as her skilled DHS sedentary work for the state of Tennessee, for the required one year continuous duration.

Therefore, medical disability has not been established at Step 2 and also would not have 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 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: 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

201278260/WAS

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:

