

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-54077
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: November 21, 2012
Kent 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, an in person hearing was held on November 21, 2012. Claimant appeared and provided testimony on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [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/SDA application on December 13, 2011 was denied on February 27, 2012, per BEM 260/ 261, with a hearing request on May 15, 2012.
2. Vocational factors: Age [REDACTED] a high school education, and history of semi-skilled administrative/office worker and skilled work by taking incoming orders over the phone and processing them into a computer. (DHS Exhibit A, Pg.7).
3. Last employment ended 2002 due to illness.
4. Claimant alleges disability due to medically diagnosed disorders of autoimmune disorder and right vision problems (Minimal) (DHS Exhibit A, Pg. 1).
5. Medical reports of record state the Claimant on:

- a. April 20, 2011: Her strength is 5/5 in all extremities; and that she has normal reflexes and gait. (DHS Exhibit A, Pg. 23).
 - b. November 1, 2011: Has done fairly well from an infectious standpoint. (DHS Exhibit A, Pg. 16).
 - c. December 1, 2011: Has a minimal fall risk gait. (DHS Exhibit A, Pg. 14).
 - d. November 14, 2012: Has limited vision in right eye; that her contact was removed, but her vision remains limited.
6. State Hearing Review Team decision dated June 11, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Pg. 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 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 2002.

Step 2, disability is not denied. The medical evidence of record, on date of application, does establish the Claimant's significant functional physical incapacity, based on the *de minimus* standard, to perform basic work activities for the required one 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).

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 an M.D. or D.O. or fully licensed psychologist. Medical reports would include:

- Your ability to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling.
- 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).

The claimant testified that her right eye disorder is a minimal impairment; that she has disabling inflammation of the intestines, bladder, and muscles causing intermittent pain; that she is unable to lift/carry weight on bad days, otherwise on good days she would be able to lift/carry two gallons of milk.

The medical opinion of record states that the claimant has a significant disability and has been unable to work.

...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).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

The medical opinion in November, 2012 states that the claimant has a significant disability and has been unable to work (Findings of Facts #5d).

This conclusion is not supported by the objective medical evidence of record in April, November and December, 2011 (Findings of Facts #5a, b & c).

The medical evidence states the claimant's musculoskeletal is 5/5 in all extremities; that she has **normal** reflexes and gait, that she is doing fairly well; that pain/discomfort rating in a range of 0-10 is 2; and that she has a **minimal** (non-severe) fall risk and steady gait. There is nothing in these three reports that support the medical conclusion. Therefore, this ALJ does not give much evidentiary weight to the medical conclusion.

The medical reports of record are examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's basic work limitations for the required duration.

The claimant admitted that her right eye impairment is **minimally** severe (not severe).

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. Therefore, the sequential evaluation continues to the next step.

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 work, such as an administrative/clerical sedentary office work.

Therefore, the sequential evaluation is required to stop.

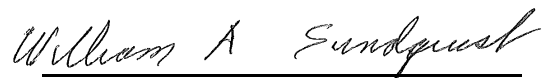
The department's Bridges eligibility manual contains the following policy statements and instructions for case workers regarding the State Disability Assistance (SDA) program: to receive SDA, a person must be disabled, care for a disabled person or age be age 65 or older. BEM, Item 261, Pg. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for SDA benefits either.

Therefore, medical disability has not been established at Steps 3 & 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: 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.

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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

WAS/jk

cc:

