

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201264615
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 14, 2012
Ingham 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 14, 2012. Claimant appeared and provided testimony along with [REDACTED]. 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 (3 months retro) application on October 28, 2011 was denied on April 20, 2011 per BEM 260, with a hearing request on July 16, 2011.
2. Claimant was age [REDACTED] with a [REDACTED] [REDACTED] or more education and work experience as a skilled administrative/office/trainer manager of a health facility.
3. Claimant's last employment ended May 2010 due to health; she became eligible for unemployment compensation benefits (UCB) in July 2010 with exhaustion in February 2012.
4. Claimant alleges disability due to medically diagnosed disorders of tachycardia, multiple sclerosis and a history of breast and uterine cancer (DHS Exhibit A, pg. 86).

5. Medical reports of record state the Claimant on:
 - a. April 20, 2011, is in general in **no** acute distress; that she is well-nourished, well developed; that her eyes – pupils are equal, round, reactive to light and accommodation; that extraocular muscles were intact; that she has **normal** lids and conjunctiva; that in the cardiovascular area she has **normal** S1 and S2; that she has a regular rate and rhythm; that there are **no** murmurs, rubs or gallops, her spine is **normal** in alignment and range of motion; that her cranial nerves II through XII are **grossly** intact; that she does have **some** scattered numbness bilaterally, 2+ reflexes symmetrical bilaterally; and that she does have 4/5 strength which is symmetrical bilaterally (DHS Exhibit A, Page 42).
 - b. July 6, 2011, her eye - pupils were equal and **normally** reactive to light; that the cardiovascular system had **regular** rate and rhythm, S1, S2 heard; that she has no S3, S4 or murmur appreciated; that she has **no** evidence of active joint inflammation; that she has a **regular** heart rate and rhythm with S1 and S2 **normal**; that her motor examination revealed **no** focal deficits (DHS Exhibit A, Pgs. 59 – 64).
 - c. November 17, 2011, had **no** chest pain in the cardiovascular system, **no** chest pain, no palpitation, **no** tachycardia at this time, and **no** shortness of breath upon exertion; that neurologically she has **no** weakness, **no** paresthesias and that her heart shows S1 and S2 with **no** audible murmur, rubs, clicks or gallops (DHS Exhibit A, Page16).
6. State Hearing Review Team decision dated August 30, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Page 86).

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 416.920.

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 May 10, 2010.

Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity to perform basic work activities based on the de minimus standard for the required one year continuous duration, as defined below. To the contrary, the evidence of record establish the Claimant's medical exams were **normal** and **regular**.

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 in accordance with 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).

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).

Claimant testified that she is unable to perform any type of work; that she can lift/carry up to 5 pounds; that her disabling complaints are chronic muscle spasms, and pain throughout her body; and that she can hardly read a computer screen and has difficulty writing.

...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 objective evidence of record established the Claimant was eligible for UCB before, on and after her MA-P application.

In addition, Claimant did receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis.

This Administrative Law Judge finds that claimant has not established that she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept her from working for a period of 12 months or more. Claimant did last work in May, 2010. Claimant received unemployment compensation benefits, before, on and after her MA-P application.

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

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

If Step 2 disability had not been denied, it would be denied at Step 4. 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 such as a skilled administrative/office manager.

If disability had not already been denied at Step 2, it would also be denied at Step 5. The medical evidence of record, on date of application, does establish the Claimant had a residual functional capacity (RFC), despite her impairments, to perform other work in the National Economy.

At Step 5, the burden of proof shifts to the department to establish that claimant does have a residual functional capacity.

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 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 demands (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 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 the Medical Vocational guideline, Rule 201.28, a younger individual (age 41), with a high school education and a skilled work history who is limited to sedentary work is not considered disabled.

Therefore, medical disability has not been established at Step 2 and would not have been 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 disability was not medically established.

Accordingly, MA-P denial is **UPHELD**.

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

Date Signed: January 8, 2013

Date Mailed: January 8, 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:

