

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201266012
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 22, 2013
County: Jackson

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 22, 2013. Claimant appeared along with his authorized representative, [REDACTED] LSSCM and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistant Attorney General, 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 application on July 9, 2012, was denied on July 9, 2012 per BEM 260, with a hearing request on July 11, 2012
2. Claimant was age 44, with a GED, and work experience as an unskilled in maintenance and janitorial work.
3. Claimant's last work ended February 28, 2012 with a prison release.
4. Claimant alleges disability primarily due to medically diagnosed disorders of bipolar disorder and depression, and secondarily based on asthma, hypertension and polycystic (DHS Exhibit A, Page 232).

5. Medical reports of exams state the Claimant on:
 - a. June 26, 2011, is acromioclavicular joint is **normal**; and that he has mild arthritic change of the glenohumeral joint with articular cartilage thinning (DHS Exhibit A, Page 187).

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 any work since his release from prison on February 28, 2012.

Step 2, disability is not denied. The objective medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity perform basic work activities due to a severe mental/physical impairment in combination 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 objective medical evidence of record. ...20 CFR 416.912(a).

[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 he is primarily unable to do any work due to a severe mental and secondarily due to a physical impairment, that he was able to physically intermittently do maintenance and janitorial work while he was incarcerated due to medication.

The GAF scores of 55 and 60 in July and December 2011, respectively, was establish

The medical evidence of record established the Claimant's GAF score 55 in July 2011 and 65 in September 2011. These scores are considered mild to moderate (not severe) mental impairment with occupational functioning. DSM Iv (4th revised-edition).

The above scores of 55 and 60 in July and September 2011, respectively, were not by acceptable medical source -- Nurse Practitioner (NP). But, these scores were consistent with the other acceptable medical scores, and therefore, evidentiary weight was given to them.

The Claimant admitted that he is not primarily disabled due to a severe physical impairment only secondarily.

The medical reports of record are mostly examination, diagnostics, 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 the Claimant minimally, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The objective medical evidence of record established the Claimant's physical examinations were either normal or unremarkable (Findings of Fact #5d and 5g).

Therefore, the Claimant has not sustained his burden of proof to establish a severe mental/physical impairment in combination, instead of a non-severe impairment, for the required duration. Therefore, the sequential evaluation is not required to continue to the next step.

If Step 2 disability had not been denied, it would have been denied at Step 3. The objective medical evidence of record, for the required duration, does not establish the Claimant's impairments meet/equal Social Security listed impairment, therefore, the sequential evaluation is not required to continue to the next step.

If Step 2 disability had not been denied, it would have been denied at Step 4. The medical evidence of record, on date of application, does not establish the Claimant's functional mental/physical incapacity, despite his impairments, to perform any of his past work, such as a unskilled maintenance and janitorial work, for the required one year continuous duration.

If Step 2 disability had not been denied, it would have been denied at Step 5. At Step 5, the burden of proof shifts to the Department to establish that the Claimant does has a residual functional capacity (RFC). 20 CFR 416.994(b)(1)(v).

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).

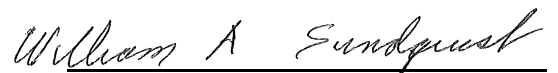
Under Step 2 therefore, the Claimant has not sustained his burden of proof to establish a severe mental/physical impairment, instead of a non-severe impairment for the required duration. Therefore, the sequential evaluation is not required to continue to the next step.

Therefore, medical disability has not been established at Step 2, and also 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 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 6, 2013

Date Mailed: February 6, 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

WAS/tb

cc:

