

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

IN THE MATTER OF:



Reg. No.: 201275223
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 12, 2012
County: St. Clair

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 12, 2012. Claimant appeared 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 June 21, 2012, was denied on August 24, 2012 per BEM 260, with a hearing request on August 30, 2012
2. Claimant was age 42, with a GED, and work experience as a semi-skilled red cross and state Certified Nurses Assistant (CNA), and unskilled security guard.
3. Claimant is currently working part-time as a CNA, 3 days a week for a total of 24 hours.
4. Claimant alleges disability due to medically diagnosed disorders of neuropathy, low back DD, and diabetes.

5. Medical reports of exams state the Claimant on:
 - a. January 19, 2012, has a **normal** range of motion of the back; that extremities are **normal**; that joints has a **normal** range of motion (DHS Exhibit A, Page 28).
 - b. February 24, 2011, has **mild** degenerative osteoarthritis changes in bilaterally wrists joints; and that she has no definite acute fracture noted (DHS Exhibit A, Page 79).
 - c. July 22, 2011, her lumbar disc herniation at L3-L4 and L4-L5; that she remains completely disabled (DHS Exhibit A, Page 187).
 - d. September 23, 2011, her right shoulder shows full range of motion, that right knee shows full range of motion; that she lumbar disc herniation at L3-L4 and L4-L5; that right shoulder sprain has improvement; that right knee meniscus tear with improvement (DHS Exhibit A, Page 188).
 - e. December 16, 2011, has lumbar disc herniation at L3-L4 and L4-L5; that she will return to work with restrictions and continue her anti-inflammatory medications (DHS Exhibit A, Page 185).
 - f. March 2, 2012, can never lift any weight, squat, crawl, kneel, pushing/pulling and climbing; that she can sometimes continuously up to 2 hours or occasionally up to 6 hours sit, stand, walk, grasping right side, grasping left side, and stair climbing; and that she can frequently continuously up to 8 hours with breaks reach over shoulder (DHS Exhibit A, Page 128).
 - g. March 23, 2012, has lumbar disc herniation at L3-L4; that she will return to work with restrictions if a job is available; that she will continue on her pain and anti-inflammatory medications (DHS Exhibit A, Page 184).
 - h. May 21, 2012, has deteriorating condition (DHS Exhibit A, Page 9).
6. State Hearing Review Team (SHRT) decision dated September 26, 2012, states the Claimant's disorders do not meet/equal a Social Security listing (DHS Exhibit A, Page 48).

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 been engaged in part-time work 3 days a week for a total of 24 hours as a CNA.

Step 2, disability is not denied. The objective medical evidence of record, on date of application, establishes based on the de minimus standard, the Claimant's significant functional 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 burden of proof is on the Claimant to establish disability based on the 5 step process above. ...20 CFR 416.912(a).

Claimant testified that she is currently employed in an adult care facility as a CNA with restrictions 3 days a week for 24 hours; that she has restrictions on bending and lifting; that can lift/carry 2 gallons of milk; that her disabling condition is due to chronic pain in low back and legs; that medication relieves her pain; that medical disorders of neuropathy, low back DDD and diabetes in combination limited her to her current part-time 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).

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, and the sequential evaluation is required to continue.

Step 3 disability is denied. 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 analysis will continue.

At 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 a walking security guard, for the required one year continuous duration.

Substantially gainful activity is work activity that involves doing significant physical activities. Your work may be substantial even if it is done on a **part-time** basis or if you do less, get paid less or have less responsibility than when you work before. 20 CFR 416.972(a).

The medical evidence of record states a conclusion that the Claimant is limited to no bending and no heavy lifting/carrying (capacity for 2 gallons of milk according to Claimant).

...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).

Therefore, not much evidentiary weight is given to the medical conclusion.

In the Claimant's past job as a security guard, she testified that the job required her to walk and patrol the grounds for unwanted individuals outside of her employers building. The Claimant introduced no medical evidence of record that she was restricted for this type of past work.

Therefore, the analysis is required to stop.

If disability had not been denied at Step 4, it would also be denied at Step 5. The medical evidence of record, on date of application, does not establish the Claimant was without a RFC, despite her impairments, to perform any other work in the National Economy, for the required one year continuous duration.

At Step 5, the burden of proof shifts to the Department to establish that the Claimant does have a RFC.

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).

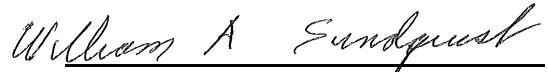
Under the Medical-Vocational guidelines, Rule 201.27, a younger individual, age 42, with a high school equivalent (GED) education, and an unskilled work history who is limited to sedentary work is not considered disabled.

Therefore, medical disability has not 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: April 9, 2013

Date Mailed: April 9, 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:

