

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

IN THE MATTER OF:



Reg. No.: 201275534
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 13, 2012
County: Tuscola

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 13, 2012. Claimant appeared and provided testimony on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

The hearing record was extended 90 days for a 2nd SHRT review of medical reports submitted at the hearing. (Claimant Exhibit 1).

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 April 9, 2012, was denied on August 7, 2012 per BEM 260, with a hearing request on August 24, 2012
2. Claimant was age 44, with a high school or more education, and work experience as a semi-skilled adult home caregiver and assistant of an apartment complex, and skilled work as a special education assistant for children.
3. Claimant's last employment ended May 2011 due to back pain.
4. Claimant alleges disability primarily due to medically diagnosed disorders of fibromyalgia, herniated disc, tears in left shoulder, and knee pain.

5. Claimant's disabling symptoms are chronic low back pain radiating down left leg to toes, weakness in left leg, left shoulder pain relieved by intervention of medical injection, neck pain radiating down both arms relieved by medical intervention of medical injection, and depression secondary to her physical condition.
6. Medical reports of exams state the Claimant on:
 - a. May 31, 2011, has **normal** spinal levels L1-L2; that she has normal spinal levels at L2-L3 (DHS Exhibit A, Page 39).
 - b. June 21, 2012, is alert and oriented x3 with no cognitive deficits; that she was able to raise both hands above her head, that she has **some** tension and tenderness in the trapeze muscle; that fine dexterity was **normal**; that Tinell's was **negative**; that she had trouble bending and touching her toes; that she had great difficulty raising her left leg off the bed once supine; that she had **some** problem with the right leg; that she has evidence of scoliosis with the right; that reflexes was **normal**; that she has the abilities to sit, stand, bend, stoop, carry, push, pull, button clothes, tie shoes, dress/undress, dial telephone, open door, make a fist, pick-up coin, pick-up pencil, write, squat and arise from squatting; get on and off examining table, climb stairs; that she was able to walk on heels and toes in tandem; that her gait was stable and within **normal** limits; that she had a normal range of motion of the cervical spine, lumbar spine, shoulders, knees, ankles, wrists, hands-fingers (DHS Exhibit A, Pages 17-22).
6. State Hearing Review Team (SHRT) decision dated October 16, 2012, states the Claimant's disorders do not meet/equal a Social Security listing (DHS Exhibit A, Page 55).

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 been engaged in substantial gainful activities since May 2011.

Step 2 disability is denied. The objective medical evidence of record, on date of application, does not establish 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).

The objective medical evidence of record (Findings of Fact #6) does not support the Claimant disabling symptoms (Findings of Fact #5).

...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).

Claimant testified that her depression is secondary to her physical condition.

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

If Step 2 disability had not been denied, Step 3 would also be 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.

If Step 2 disability had not been denied, Step 4 would also be 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 (Findings of Fact #2).

If Step 2 disability had not been denied, Step 5 would also be denied. At Step 5, the burden of proof shifts to the Department to establish that the Claimant does has 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 Step 4, Claimant introduced no objective medical evidence of record of inability to perform any of her past work, despite her physical impairments. Therefore, this Administrative Law Judge (ALJ) finds that the Claimant has the RFC for less strenuous work, than her past work, such as sedentary type work, as defined above.

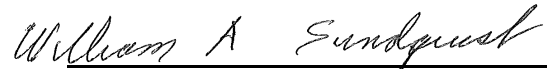
Vocational Guidelines, 201.28, a younger individual, age 44, with a high school or more education and semi-skilled work history who is limited to sedentary work is not considered disabled.

Therefore, medical disability has not been established at Steps 2, and also would not be 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,

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- 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
Recons ideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

WAS/tb

cc:

