

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201248536
Issue No: 2009
Case No: [REDACTED]
Hearing Date: July 11, 2012
County DHS: Kent

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 July 11, 2012. Claimant appeared along with Dale Glidden and both provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The record was extended 90 days for a 2nd SHRT review of medical reports introduced at the hearing. (Claimant Exhibit A, B, and C).

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 August 24, 2011, was denied on April 11, 2012, per BEM 260, with a hearing request on April 17, 2012.
2. Vocational factors: Age [REDACTED] high school education, and history of unskilled factory work removing ½ lb parts from conveyor belt and packaging them, and semi-skilled work as a bartender and waitress.
3. Last employment ended 1993.
4. Disability is alleged due to a combination severe mental/physical impairment of arthritis, liver disease, hypothyroidism, ADHD, depression, bipolar, anxiety and post-traumatic stress disorder (PTSD).

5. Medical reports of record state the Claimant on:
 - a. July 19, 2011, has a GAF score of **45**.
 - b. August 6, 2011, had a GAF score of **60**. (Claimant exhibit C, Page 100).
 - c. August 6, 2011, was admitted because she was intoxicated with alcohol and also overdosed on valium at the same time; that she is currently stable; and that she has a history of alcohol dependency. (Claimant exhibit C, Page 98).
 - d. November 9, 2011, has a GAF score of **45** by a person with an LNSW degree. (Claimant exhibit A, Page 12).
 - e. November 16, 2011, is alert and oriented and in **no** distress; the gait is slow but **normal**; the neurologically cranial nerves II-XII are **intact**; that strength is 5/5 x four extremities; that the Romberg is **negative**; that psychologically she has **no** depressed affect; that thought content is **intact**; that she has a **regular** heart rate and rhythm; that lungs are **clear** to auscultation bilaterally; that she has a **full** range of motion of her back; that lumbar spine has **no** tenderness to palpitation stepoffs; that right hip has **full** extension, flexion 10 degrees, and internal/external rotation 5 degrees. (Medical packet, Page 8).
 - f. December 1, 2011, is alert and oriented and in no distress; that psychologically she has **no** depressed effect; that her thought content is **intact**. (Medical packet, Page 9).
 - g. December 12, 2011, has **mild** degeneration of right hip; that she is alert and oriented and in **no** distress; and that she is ambulatory with a **normal** gait. (Medical packet, Page 10).
 - h. January 3, 2012, has **normal** body systems for neuro, musculoskeletal, and **mental** examination areas; and that her condition is **stable**. (Medical packet, Page 19).
 - i. April 13, 2012, has a GAF score of **10**. (Claimant exhibit C, Page 17).
 - j. April 19, 2012, was admitted with an alcohol level of 0.16 and discharged with a GAF score of 60. (Claimant exhibit C, Page 18).
 - k. April 23, 2012, had a GAF score of **10-20**. (Claimant exhibit C, Page 28).

- i. April 24, 2012, is well developed, well nourished and in **no** acute physical distress; that she has a **full** range of motion of her upper and lower extremities; that cranial nerves 2-12 are **grossly** intact; that her pain and muscle tone are within **normal** limits; that strength testing is 5 out of 5 with hand grips and strength against resistance; that motor tests: Romberg, finger-to-nose, heel walk, tiptoe and squat are within **normal** limits; that she has **no** history or physical finding which would prohibit **full** activity. (Claimant exhibit C, Page 23 & 24).
 - m. April 27, 2012, was admitted with a GAF score of **20** and discharge of **55**. (Claimant exhibit C, Page 32).
- 6. State Hearing Review Team decision dated June 13, 2012 states the Claimant's impairments do not meet/equal a Social Security listing. (Medical Packet, Page 33).

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.

The burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...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 established the Claimant has not been engaged in substantial gainful activities since 1993.

Step 2, disability is denied. The medical evidence of record, on date of application, does establish the Claimant's significant functional incapacity to perform basic work activities due to a combination severe mental/physical impairment but not 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 medical evidence of record establish Claimant's acceptable GAF scores by an MD, DO or fully licensed psychologist per BEM 260 for July 2011 to April 2012 (period of less than 12 continuous months). In July 2011 she has a score of 45, in August 2011 score of 60, in April 2012 scores of 60, 20 and 55. The other scores were by an unacceptable source or unknown source. Scores below 51 are considered a severe mental impairment with occupational-functioning. And 51 and above a non-severe mental impairment with occupational-functioning. DSM- IV (4th edition-revised).

The medical evidence of record does not establish the Claimant's abnormal physical findings has persisted on repeated examinations for a reasonable presumption to be made that a severe impairment has lasted or expected to last for at least one continuous year. To the contrary, the objective evidence of record establish the Claimant's medical exams were normal any physical impairment was considered mild (not severe).

The medical reports of record are mostly examination, diagnostic, treatment reports. They do not provide medical assessments of Claimant's mental/physical limitations relative to her functional incapacity to perform basic work activities as defined above. 20 CFR 416.913 (c)(1) and (2). Stated differently, does combination of mental/physical impairments medically impair the Claimant slightly, mildly, moderately (non-severe) impairment as defined above) or severely, as defined above?

The medical evidence of record does not establish a combination severe mental/physical impairment meeting the 1 year continuous duration requirement. It establishes a non-severe impairment.

If disability had not already been denied at Step 2, it would also be denied at Steps 3 and 4. The medical evidence of record, on date of application for required durations, does not establish the Claimant's impairments meet/equal a Social Security listing at Step 3, and inability to perform any past work such as her factory work taking ½ lb parts off conveyer belt and packaging them, bartending, and waitressing, at step 4.

Therefore, disability has not been establish at Step 2 and also would not be established at Steps 3, and 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**.

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

Date Signed: January 7, 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:

