

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201256687
Issue No: 2009
Case No: [REDACTED]
Hearing Date: August 28, 2012
Roscommon 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, a telephone hearing was held on August 28, 2012. Claimant appeared with Stacha Letourague 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 October 27, 2011 was denied on May 11, 2012 per BEM 260/261, with a hearing request on June 4, 2012.
2. Claimant was age [REDACTED] with a [REDACTED] education, and work experience as unskilled cleaning of automobiles, and after construction completion, and motels cleaning. (DHS Exhibit A, Pgs. 7)
3. Claimant's last employment ended April 2007.
4. Claimant alleges disability due to medically diagnosed disorders of asthma, fibromyalgia, carpal tunnel syndrome, arthritis, back pain, COPD, and anxiety in combination. (DHS Exhibit A, Pg. 173).

5. Medical reports of record state the Claimant on:
 - a. January 23, 2012: Has a normal alertness and orientation, ability to follow directions, memory, etc; that her condition is stable. (DHS Exhibit A, Pg. 14)
 - b. January 23, 2012: Is ambulatory (DHS Exhibit A, Pg. 16).
6. State Hearing Review Team decision dated July 12, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit, Page 173).

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 April, 2007.

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 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 reports of record are examination, diagnostic, treatment and progress reports and do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, the medically diagnosed disorders do not establish whether or not the Claimant is impaired slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

It is the well settled law that fact finders are not permitted to speculate at material facts in dispute. And it would only be a guess as to whether a severe impairment had been medically established, as defined above, based on the medical evidence of record.

Therefore, the Claimant has not sustained her burden of proof to establish a severe impairment, instead of a non-severe impairment, for the required duration.

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

If disability had not already been denied at Step 2, it would also be denied at Step 4. The medical evidence of record, on date of application, does not establish the Claimant's functional incapacity, despite her impairments, to perform any of her past work as a cleaner of automobiles, construction sites, and motels for the required one year continuous duration.

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 not establish the Claimant was without a residual functional capacity (RFC), despite her impairments, to perform other work in the National Economy for the required one year continuous duration.

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 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).

The medical evidence of record, on date of application, does not establish the Claimant was without a RFC for less strenuous work than her past work, such as sedentary work, as defined above. Under the Medical-Vocational Guidelines, Rule 201.24, a younger individual age 44, with a 10th grade education, and unskilled work history who is limited to sedentary work is not considered disabled.

Therefore, 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 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 7, 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/hj

cc:

