

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201263927
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: October 11, 2012
County DHS: Allegan

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, an in-person hearing was held on October 11, 2012. Claimant appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED]. The hearing record was extended for 90 days for a second 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 (3 months retro) /SDA application on February 2, 2012, was denied on June 28, 2012, per BEM 260/261, with a hearing request on July 9, 2012.
2. Claimant was age 43, a 9th grade education, and work experience as an unskilled sales, customer helper at Wal-Mart, restaurant waitress, and nurse's aide; and semi-skilled work as an inspector of electronic circuit board devices and soldering circuit board components.
3. Claimant's last employment ended January 2009 due to medical reasons; she became eligible for unemployment compensation benefits in March, 2009 with exhaustion in March, 2011.

4. Claimant alleges disability due to medically diagnosed disorders of fibromyalgia, disc degeneration, spinal stenosis, TMJ, and post-traumatic stress disorder. (DHS Exhibit A, pp. 98).
5. Medical reports of examinations state the Claimant on:
 - a. January 18, 2012, Claimant has overall general examination within normal limits with a stable condition. (DHS Exhibit A, pp. 72)
 - b. May 25, 2012, Claimant was cooperative in answering questions and following commands; that she appears mildly depressed and seem to be in mild discomfort; that her immediate, recent and remote memory is intact with normal concentration; that her insight and judgment are both appropriate; that there is no evidence of joint laxity, crepitation, or effusion; that grip strength remains intact; that dexterity is unimpaired; that she could tie and button clothing, and open a door; that she had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting, and no difficulty standing on either foot; that range of motion studies for normal for the cervical spine, dorsolumbar spine, shoulders, elbows, hips, wrists, hands -fingers; that cranial nerves are intact; that motor strength and tone are normal; that sensory is intact to light touch and pin prick; that patient walks with a mild right limp without the use of an assist device; that she had undergone a cervical spine fusion and this appears to be relatively stable; that her range of motion was 4; that her degree of impairment appears somewhat mild but potentially treatable; and that her prognosis is fair but not declining. (DHS Exhibit A, pp. 26-29).
 - c. June 15, 2012, was cooperative in answering questions and following commands; that she appears mildly depressed today; that her immediate, recent and remote memory is intact with normal concentration; that her insight and judgment are both appropriate; that there is no evidence of joint laxity, crepitation, or effusion; that grip strength remains intact; that dexterity is unimpaired; that she could tie, button clothing and opening door; that she had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting due to pain in right knee, and no difficulty standing on either foot; that there is mild lumbar spine straightening without tenderness; that range of motion is normal for the cervical spine, dorsolumbar spine, ankles, and wrists; that cranial nerves are intact; that motor strength is intact; that muscle tone is normal; that she walks with a mild right limp without the use of an assist device; that she does not have some old neuropathy in the right arm; that she has the ability to sit, stand, bend, stoop, carry, push, pull, button close, 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 is able to walk on heels and toes; that her gait is stable and within normal limits; that she has a mild right lurching gait; that her grip strength is 5/5. (DHS Exhibit B, pp. 1-6).

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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).

The 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.

When determining disability, the federal regulations 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 engaged in substantial gainful activities since January, 2009.

Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant mental/physical incapacity to do basic work activities for the required 1 year continuing duration, as defined above:

...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, as defined above, by the preponderance of the medical evidence of record...20 CFR 416.912(a).

Claimant testified that primarily it was her back that disabled her due to pain; that her spine cracks, pops, and feel like it is going to break; that after gripping an object for 5-10 minutes, her hamstring gives out; and that she is limited to lifting/carrying 10 pounds.

...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).

The Claimant has not sustained her burden of proof to establish a mental/physical severe impairment in combination instead of a non-severe impairment, for the required duration.

Therefore, the sequential evaluation is required to stop.

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

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 mental/physical incapacity, despite her impairments, to perform any of her past work for the required 1 year continuous duration.

At Step 5 the burden of proof shifts to the DHS.

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, establishes the Claimant had at least a residual functional capacity, despite her impairments, to perform any other work in the National Economy, such as her sedentary work as an inspector of circuit board electronic devices, for the required 1 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).

Under the Medical-Vocational Guidelines, Rule 201.24, a younger individual, age 43, with a 9th grade education and unskilled work history who is limited to sedentary work is not considered disabled.

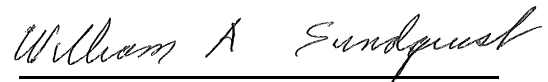
The Department's program eligibility manual contains the following policy statements and instructions for case workers regarding the State Disability Assistance program: To receive State Disability Assistance, a person must be disabled, carrying for a disabled person or age 65 or older. BEM, item 261, pp. 1. Because the Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either.

Therefore, medical disability has not been established at Step 2 and also would not have been established at Steps 3, 4 & 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**.



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

Date Signed: February 8, 2013

Date Mailed: February 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

WAS/kl

cc:

