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

IN THE MATTER OF: Reg. No: 201266821

Issue No: <u>2009</u>

Case No:

Hearing Date: October 31, 2012

Ingham

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 October 31, 2012. Claima nt appeared and provided testimony on her behalf. Participants on behalf of the Dep artment of Human Servic es (Department) included

# <u>ISSUE</u>

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 8, 2012 was denied on July 18, 2012 per BEM 260, with a hearing request on July 25, 2012.
- Claimant was age 49, with a 11<sup>th</sup> grade education and no work experience for last 15 years.
- Claimant's last employment ended August 1994 due to her quitting.
- 4. Claimant alleges disability due to chronic pain in hands and wrists, back and knees.
- 5. Medical reports of record state the Claimant on:
  - a. January 30, 2012 needs no assistive device; she is able to lift the 5 lb dumb bell from her lap to either hand over head but she displays trembling of the arms with sust ained holding the 5 lbs dumb bell extended in 90 degrees forward flexion at her shoulders; the at muscle testing was normal; that she had no muscle spasm, grip 5/5 bilaterally, right handed; that se nsory had a normal touch, position

sense and vibration; that straight leg in the seated position elic its pain in the left posterior/lateral leg along the L5 dermatome with left knee extension at 60-70 degrees; that her rapid alternating movements were intact; that she had fine and gross motor coordination; that the Babinski test was negat ive; that range of motion was normal to all areas except her knees; that she had a equal swing and stance gait and able to step climb, heel and to e walk and half squat without assistance in/out of the chair; that she is able to do all the orthopedic maneuvers from her chair while seated but she resisted climbing, squatting, and forward flexion due to left knee pain (DHS Ex A, pg 18-19).

# **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the C ode 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 substant ial 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 y ou 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 are used as a guideline and require that several considerations be analyzed in sequentia I order. If dis ability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perf orm S ubstantial 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 cli ent is ineligible for MA. If yes, the analysis c ontinues to Step 3. 20 CF R 416.920(c).
- 3. Does the impairment appear on a spec ial listing of impairments or are the cli ent's symptoms, signs, and laboratory findings at least eq uivalent in s everity to the set of medical findings specified for the listed impairment? If no, the analys is 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 1994.

Step 2 disability is not denied. The medic all evidence of record, on date of application, establishes the Claim ant'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 di sabled. 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 signific antly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

**Basic w ork activities.** When we talk about basic work activities, we mean the abilities and aptitudes neces sary to do most jobs. Examples of these include:

- 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 ultima tely favorable dis ability determination cannot result. (20 CFR 416.920(c)).

The burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 416.912(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable m edical sources.... 20 CFR 416.913(a).

Acceptable medical sources about your impairments are an M.D. or D.O. or fully licensed ps ychologist. Medical reports would include:

### 201266821/WAS

- Your ability to do work-re lated activities such as sitting, standing, moving ab out, lifting, carrying, handling objects, hearing, speaking, and traveling.
- In cases of mental impairment s, your ability to reason or make occupational, personal, or social adjustments. ...20 CFR 416.913(a)(c)(1) and (2).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which s how that you have a medical impairment.... 20 CFR 416.929(a).

Claimant testified that she is unable to work due to c hronic pain in hands and wrists, back and k nees; that she is di sabled due to past eye injury; and that she is limited to lifting/carrying 5 lbs.

The medic al reports of record was mostly examination, diagnostic, treatment and progress reports and do not provide medical assessments of Claim ant's basic work limitations for the require dur ation. Stated differently, do the Claimant's diagnosed medical disorders impair the Claimant minimally, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

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

Step 3 dis ability is denied. The medical evi dence of record, for the required duration, does not establish Claimant's impairments meet/equal a Social Security listed impairment.

Step 4 dis ability is not denied. The medic al evidence of record, on date of application, establishes the Claimant has not worked for 15 years.

...However, even if you have no work ex perience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time. 20 CFR 416.965(a).

At Step 5, the burden of proof shifts to the department to establish that Claimant doe s have residual functional capacity. ...20 CFR 416.994 (b)(1)(v).

The residual functional capacity is what an individual can do despite limitations. All impa irments will be considered in addition to ability to meet certain demand s of jobs in the national economy. Physical demands, mental demands, sensory requirement s and other functions will be evaluated...20 CFR 416.945 (a).

To determine the physical demands (exer tional requirements) of work in the national economy, we classify jobs as sedentary, light, m edium and heavy. These terms have the s ame meaning as they have in t he Dictionary of Occupational T itles, published by the Department of Labor...20 CFR 416.967.

**Sedentary w ork**. Sedentary work involves lifting no more than 10 lbs 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 201.18, a younger individual age 49, with an 11<sup>th</sup> grade education and an unskilled work hist ory who is limited to sedentary work is not considered disabled.

The medical ev idence of record established the Claimant's RF C for sedentary type of work (Finding of Fact, 5a).

Therefore, medical disab ility h as not been established at Step 3 and 5 by the competent, material and subjective evidence on the whole record.

# **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion sof 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 12, 2013

Date Mailed: February 12, 2013

**NOTICE**: Administrative Hearings may or der a re hearing 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 Hear ings will not orde rarehearing 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 ti mely 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 <u>MAY</u> 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
Recons ideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

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