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

#### IN THE MATTER OF:



Reg. No:
201268216

Issue No:
2009;4031

Case No:
Image: Comparison of the second second

Muskegon 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 October 25, 2012. Claima nt appeared and provided testimony on her behalf. Participants on behal f of the Dep artment of Human Servic es (Department) included

### **ISSUE**

Was disability, as defined below, medically established?

# FINDINGS OF FACT

The Administrative Law Judge, based upon t he competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. Claimant's MA-P/SDA ap plication on April 19, 2012 was denied on July 16, 2012 per BEM 260/261, with a hearing request on July 24, 2012.
- 2. Claimant was age 45, with a 12<sup>th</sup> grade education.
- 3. Claimant's last employment ended August 2, 2004.
- Claimant alleges disability due to medically diagnosed dis orders of fibromyalgia, chronic obstructive pul monary disease, a sthma and arthritis (DHS Ex A, p 46).
- 5. Medical reports of record state the Claimant on:
  - a. February 15, 2012 her lungs are cl ear to auscultatio n bilaterally; that there is no wheezing, rales or rhonchi (DHS Ex A, p 8).

- b. February 27, 2012 has no signific ant abnormality of the right knee (DHS Ex A, p 1)
- c. April 26, 2012 is well-developed, well-nour ished; that she had no complaint today exc ept that s he was going to run out of her medication; that lungs are relativ ely cle ar to auscultat ion; she did have slight ly harsh breath sounds bi laterally; that she does have COPD and is not comp laining of any whe eze, cough or shortne ss of breath at this time; that she is able to demonstrate full rang e of motion and self ambulate throughout without any difficulty (DHS Ex A, 22-23).
- d. May 10, 2012 is in no acute distre ss; that she is comfortable in no obvious pain or dis comfort; that lungs are clear to auscultation bilaterally without wheezes, rhonchi or rales; that neurolog ically cranial nerves II-XII and sensory grossly intact (DHS Ex A, p 27).
- 6. State Hearings Rev iew Team (S HRT) report dated September 13, 2012 states the Claimant 's disorders does not meet/equal a Soc ial Security listing (DHS Ex A, p 46).

# CONCLUSIONS OF LAW

The State Disability Assist ance (SDA) program which provides f inancial assistance for disabled persons is established by 2004 PA 344. The Depar tment 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 polic ies 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 Feder al 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 polic ies 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 resi dual functional capacity, your past work, and your age, educati on 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 sequential order. If di sability can be ruled out at any step, analys is 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).
- 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 August 2, 2004.

Step 2 disability is not denied. The medic al evidence of record, on date of application, establish the Claimant's significant functional physical incapacity, based on the *de minimus* standard, to do basic work activities for the required one y ear 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 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 walk ing, 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 clai mant to establish dis ability 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 s ources about your im pairments are by an M.D. or D.O. or fully li censed psychologist. Medical reports should include assessment of your ability to do work related activities suc h as sitting, standing, moving about, carrying, handling objects, hearing, speaking, and traveling; and in cases of mental impairments, your ability to reason or make occ upational, personal, or so cial adjustments. ...20 CFR 416.913(a)(c)(1) and (2).

Claimant testified that she is unable to do any work due to constant pain throughout her body; and that she is limited to lift/carry up to 20 lbs.

Statements about pain or ot her symptoms do not alone establish disab ility. Ther e must be medica I sig ns and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

.. Medical reports should include -

(1) Medical history.

- (2) Clinical findings (suc h as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities wit hout significant limitations, he or she is not consider ed disabled. 20 CFR 416.994(b)(1)(iv).

The medic al reports of record are examination, diagnostic, treatment and progres s reports and do not provide medic al assessments of Claimant's basic work limitations for the required duration. Said 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 sustained her burden of proof 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 disability is denied. The medical evid ence of record, on date of applic ation, does not establish the Claimant's functional inc apacity, despite her im pairments, to perform any of her past work, such as a cook with no lifting requirement, of the require one y ear continued duration.

At Step 5, the burden of proof shifts to the department to establish that Claimant doe s not have residual functional capacity (RFC).

The residual functional capacity is what an indiv idual 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...20CFR 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...20CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 lbs at a time and occ asionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which in volves 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. 20CFR 416.967(a).

Under the Medical-Vocational guidelines, Rule 201.21, a younger individual age 45, with a high sc hool education and a n unskilled work history as a se mi-skilled cook, who is limited to sedentary work is not considered disabled.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability As sistance program: to receive State Disability Assist ance, a person must be dis abled, caring for a disable d person or age 65 or older. BEM , Item 261, p. 1. Because the claimant does not meet the definition of disabled u nder the MA-P program and becaus e the evidence of record does not establish that claimant is unable t o work for a period exceeding 90 days, the claimant does not meet the disability criteria for Stat e Disability Assistanc e benefits either.

Therefore, medical disab ility h as not be en established at Step 2, ha s not bee n established at Steps 3, 4 and 5 by the com petent, material and subjective evidence on the whole record.

# DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides disability was not medically established.

Accordingly, MA-P/SDA denial is **UPHELD**.

William A Sundquest

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 t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or

reconsideration on the Department's mo tion where the final decis ion 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 <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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