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

#### IN THE MATTER OF:



Reg. No: Issue No: Case No: Hearing Date: County DHS: 201268411 2009, 4031

November 20, 2012 Oakland (02)

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

# **HEARING DECISION**

This matter is before the undersigned Administ rative 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 November 20, 2012. Claim ant appeared and provided testimony on her behalf. Participants on behal f of the Dep artment of Human Servic es (Department) included . H earing record was extended 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 substantia I evidence on the whole record, finds as material fact:

- 1. Claimant's MA-P/SDA app lication on Apr il 18, 2012, wa s denied on July 24, 2012, per BEM 260/261, with a hearing request on July 30, 2012.
- 2. Claimant was age 35, with a 12 <sup>th</sup> grade edu cation, and semi skille d work in heavy exertional landscaping and janitorial work.
- 3. Claimant's last employment ended in 2008 due to a motorcycle accident.
- 4. Claimant alleges disability due to medically diagnosed disorder of left side of body nerve damage secondary to motorcycle accident.
- 5. Medical reports of exams state the Claimant on:
  - a. January 12, 2012, Claimant has no ev idence of acut e fracture or malalignment of the s acrum and coccyx; and that the sacroiliac joints are preserved. (DHS exhibit A, Page 48).

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- February 29, 2012, Clai mant is well built, we ll nourished and in no b. acute distress: that she has mo derate restriction of range of motion of the left shoulder and unable to raise her arm above chest lev el; that she has mild restriction of range of motion of the right shoulder, that she has moderate restriction range of the cervic al spine with paracervical tenderness, more on the left than on the right; that she has moderate restriction of range of motion of the lumbar spine and pain during bending; that her gait is slow but normal ; that her cranial nerves III-XII are grossly normal; that tendon reflexes ar e symmetrical; that her power is 5/5 overall; that she has a normal range of motion of the cervical spine, lumbar spine, shoulders, hips, knees, ankles, wrists and hand-fingers; that she is able to sit, stand, button close, dress-undress, dial telephone, open door, make a fist, write, get on and off cable, but unable to bend, stoop, carry, push, pull, ties shoes, pick up coin, pi ck up pencil, squat and arise from squatting, and climb stairs; that her gait is stable and within nor mal limit. (DHS Exhibit A, Pages 7-12),
- 6. SHRT report dated S eptember 24, 2012, states the Claimant's disorders don't meet/equal a Social Security listing. (DHS Exhibit A, Page 82).

### CONCLUSIONS OF LAW

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department polic ies ar e found in the Bridges Administrative Manua I (BAM), the Bridges Elig ibility Manual (B EM) and the Bridges Reference Manual (BRM).

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by T itle 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, 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 require that s everal considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is <u>not</u> 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 Resid ual Functional Capac ity (RFC) to perform other work according to the guidelines set forth at 20 CF R 404, Subpart P, Appendix 2, Sect ions 200.00-204.00? If yes, the analysis ends and the client is in eligible 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 activity since 2008.

Step 2 disability is not denied. The medic al evidence of record, on date of application, establishes the Claim ant's significant functional physical incapacity, based on the de minimum standard, to do basic work act ivities for t he required 1 year continuou s duration as defined below.

...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).

...In deciding whether you are disabled, we will alway s consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evi dence relevant to your claim , including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

#### 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 establis h a m edical disability as define d above...20 CFR 416.912(a).

Claimant testified that she cannot do any work due to chronic left body side pain from a motorcycle injury 4 years ago; and that she is limited to carrying/lifting 5 pounds.

### GAINFUL WORK

Clients who are work ing and performing s ubstantial gainful activity (SGA) are not disabled regardless of medica l condition, age, educ ation or work experience. (20 CFR 416.920(b)).

Therefore, the Claimant has sustained her burden of proof to establish a severe physical impairment instead of a non-severe impairment, for the r equired duration. Therefore the sequential evaluation is required to continue to the next step.

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

Step 4 disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's functional physical incapacity, despite her impairments, to perform any of her past janitorial work.

The medic al reports of record are exam inations, diagnostic, treatment and progres s reports and do not provide medical assessments to the Claimant's past work limitations.

If disability had not already been denied at Step 4, it would also be denied at Step 5. At this step the burden of proof shifts to the Department. The medical evidence of record, establishes that the Claim ant had a r esidual functional c apacity, despite her impairments, to perform other work in the national economy.

The residual functional capac ity is what an individual can do desp ite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs of the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluation....20 CFR 416.945(a).

To determine the physical demand (exertional requirements) of work in the national economy, we class ify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dict ionary of Occupational Titles, publis hed by the Department of Labor....20 CFR 416.967.

Sedentary work. Sedentary inv olves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles lik e docket files, ledges, and s mall tools. Although a sedentary job is defined as one whic h involves sitting, a certain amount of walking and standing as often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally as sedentary criteria are met...20 CFR 416.967(a).

Under the medical-vocational guidelines, Rule 201.27, a younger individual age 35, with a high school education and an unskilled work hi story was limited to sedentary work is not considered disabled.

The Dep artment's Bridges Eligib ility Manua I contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be disabled, 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 under the MA-P program and becaus e the evidence of record does not establish that Claimant is unable to work for a period proceeding 90 days, the Claimant does not meet the disability crit eria for State Disab ility Assistance benefits either.

Therefore, medical disab ility h as not 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 t he above findings of fact and conclusion s of law, decides that disability was not medically established.

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Accordingly, MA-P/SDA denial is UPHELD.

William A Sundpush

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

Date Signed: <u>February 12, 2013</u> Date Mailed: <u>February 12, 2013</u>

**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 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 e rror, 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 201268411/WAS

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