

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

**IN THE MATTER OF:**



Reg. No: 201269214  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Hearing Date: November 7, 2012  
Genesee County DHS #02

**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 November 7, 2012. Claimant appeared with representative, [REDACTED]. 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 (3 months retro) /SDA application on April 2, 2012 was denied on May 23, 2012 per BEM 260/261, with a hearing request on August 3, 2012.
2. Claimant was age 33, with a high school education, and history of unskilled work as a waitress and working in adult home care.
3. Claimant's last employment ended November 2011 due to fatigue, weakness, and neuropathy. (DHS Exhibit A, Pg. 15)
4. Claimant alleges disability due to medically diagnosed disorders of chronic liver failure, malabsorption syndrome, and neuropathy. (DHS Exhibit A, Pg. 168)
5. Medical reports of record state the Claimant on:

- a. February 29, 2012: Is a well developed, well nourished female; that her extremities have good femoral pulses; that her extremities were unremarkable, no joint swelling or inflammation; that neurologically she reviewed no focal deficits; that her skin condition was unremarkable. (DHS Exhibit A, Pg. 132).
  - b. March 1, 2012: Is of average built, average nourished female, looks comfortable, not in any kind of acute distress; that her extremities have no clubbing, cyanosis, or edema; that her motor examination showed generalized weakness; that strength is 4/5. (DHS Exhibit A, Pg. 143).
  - c. April 3, 2012: Has significant neuropathy, which impairs gait and stability; that she has no grip strength or sensation in hands due to neuropathy; and that she has no fine motor skills; and that her condition is stable. (DHS Exhibit A, Pg. 5).
  - d. April 11, 2012: Is ambulatory; that she is unable to drive; and that she cannot do her usual work or any other type of work. (DHS Exhibit A, Pg. 6-7).
  - e. June 7, 2012: States she can sit about 20 minutes; that she can stand about 10 minutes before she gets dizzy; that she can walk about 100 yards; that she cannot lift anything more than 5 pounds ; that she appears in MODERATE discomfort; that there is no evidence of joint laxity, crepitation, or effusion; that grip strength remains intact; that dexterity is unimpaired; that patient could pick up a coin, button clothing, or open a door but did them slowly; that she had MILD difficulty getting off the examination table; MODERATE difficulty heel-toe walking and squatting while holding on to the table, due to pain; that she had MILD difficulty standing on either foot due to pain; that straight leg raising is negative; that there is no apparent vertebrae muscle spasms, that range of motion is normal for the cervical spine, dorsal spines, shoulders, elbows, hips, knees, ankles, wrists, hands-fingers; that cranial nerves are intact; that motor strength and tone are normal; that she had diminished sensation from the knees down with diminished proprioception; that she walks with a shuffling gait without the use of an assist device; that her degree of impairment does appear MODERATE.
6. State Hearing Review Team decision dated October 1, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Pg. 167).

## 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).

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 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 November 2011.

Step 2, disability is denied. The medical evidence of record, on date of application, does establish the Claimant's significant functional physical incapacity based on the de minimus standard 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 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 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 medical sources.... 20 CFR 416.913(a).

Acceptable medical sources about your impairments are by an M.D. or D.O. or fully licensed psychologist. Medical reports should include assessment of your ability to do work related activities such as sitting, standing, moving about, carrying, handling objects, hearing, speaking, and traveling; and in cases of mental impairments, your ability to reason or make occupational, personal, or social adjustments. ...20 CFR 416.913(a)(c)(1) and (2).

The medical evidence of record states the Claimant cannot work at any job.

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

Claimant testified that she cannot do any type of work due to chronic weakness and fatigue; that she has difficulty distinguishing hot and cold on her fingers, that she has dizziness; that she cannot do her own pants; that she needs help with her personal needs; and that she cannot lift/carry a gallon of milk.

The objective medical evidence of record does not support Claimant's disability symptoms. (Findings of Facts #5, e.).

The medical reports of record are mostly examination, diagnostic, treatment and progress reports and do not provide medical 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-severe impairment, for the required duration; and the sequential evaluation is required to continue.

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

Step 4 disability is not denied. The medical evidence of record, on date of application, does establish the Claimant's physical functional incapacity, to perform any of her past work as a waitress for the required 1 year continuous duration.

At Step 5, the burden of proof shifts to the department to establish that claimant does have residual functional capacity.

...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 objective medical evidence of record establishes that the claimant would be able to do a less strenuous type of work than that of her past work as a waitress, such as sedentary work.

Under the Medical-Vocational guidelines, Rule 201.27, a younger individual age 33, with a high school education and an 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 caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled 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 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, disability has not been established at Steps 3 and 4 also would not be established at Step 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/SDA denial is **UPHELD**.



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

Date Signed: April 9, 2013

Date Mailed: April 9, 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/hj

cc:

