

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201275612  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: January 24, 2013  
County: Lenawee 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, an in-person hearing was held on Thursday, January 24, 2013. Claimant appeared and provided testimony on her behalf with [REDACTED] and [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The record was extended until February 25, 2013 at Claimant's request to submit a social security SSI approval effective May 1, 2013. As of February 28, 2013 it had not been submitted and the record was closed.

**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/SDA application on June 7, 2012 was denied on August 30, 2012 per BEM 260/261, with a hearing request on September 7, 2012.
2. Vocational factors: Age 54, 11<sup>th</sup> grade education, and past 15-year work experience as a semi-skilled care giver and skilled new house construction worker.
3. Claimant's last employment ended May 5, 2012.

4. Claimant alleges disability due to liver problems, back pain, arthritis, renal failure, heart murmur, and endocarditis. (DHS Exhibit A, Pg. 76).
5. Claimant's disabling symptoms are chronic pain and weakness in back radiating down both legs and intermittent chest pains.
6. Medical examinations state the claimant on:
  - a. May 25, 2012: Has no cardiovascular chest pain or palpitations; that musculoskeletal he has no arthritis or arthralgias; that he has a regular heart rate and rhythm; and that he has acute renal failure. (DHS Exhibit A, Pg. 27-28)
  - b. May 25, 2012: Is well-developed and fairly well-nourished and in no acute distress; that he has a regular heart rate and rhythm without gallops or rubs; that his cranial nerves II-IV are *grossly intact*; that strength and range of motion are *appropriate* and equal and bilaterally. (DHS Exhibit A, Pg. 55 & 56).
  - c. June 6, 2012: His cardiovascular and musculoskeletal are *normal*; his condition is *improving*. (DHS Exhibit A, Pg. 7).
7. State Hearing Review Team decision dated October 18, 2012 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 76).

### **CONCLUSIONS OF LAW**

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 Adult Medical Program (AMP) is established by Title XXI of the Social Security Act; (1115)(a)(1) of the Social Security Act, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies are contained 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.

The burden of proof is on the Claimant to establish disability by the objective medical evidence of record in accordance with the five step sequential evaluation below. ...20 CFR 416.912(a).

The burden of proof shifts to the DHS at step five ...20 CFR 416.994 (b)(1)(v).

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

- In cases of mental impairments, your ability to reason or make occupational, personal, or social adjustments. ...20 CFR 416.913(a)(b)(1) and (2).

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 objective evidence of record established the Claimant has not been engaged in substantial gainful activities since May 25, 2012. Therefore the sequential evaluation is required to continue to the next step.

Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity, based on the *de minimus* standard, to perform basic work activities due to a severe physical impairment in combination 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).

The medical reports of record are mostly examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, how do the Claimant's medically diagnosed disorders significantly incapacitate her functional ability to perform basic work activities for the required duration? Do the disorders impair the Claimant's ability slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The Claimant's disabling symptoms (Findings of Fact #5) are not supported by the objective medical evidence of record (Findings of Fact #6).

The medical evidence shows the Claimant had no heart/chest pain, arthritis, and had a regular heart rate and rhythm in May, 2012; and his condition was improving as of June, 2012.

...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).

Administrative law judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals. Delegation of Hearing Authority, July 13, 2012, per PA 1939, Section 9, Act 280.

Therefore, the sequential evaluation is required to stop at Step 2.

If Step 2 disability had not already been denied, it would have already been denied at Steps 3 & 4.

At Step 3, the objective medical evidence of record, on date of application, does not establish the claimant had a severe impairment meeting/equaling a social security listing for the required duration.


At Step 4 the claimant introduced no objective medical evidence of record, on date of application, of his inability to perform any of his past work (Finding's of Fact #2) despite his impairments.

Therefore, Claimant has not sustained his burden of proof to establish disability, as defined above, 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**.



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

Date Signed: April 26, 2013

Date Mailed: April 26, 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.

WAS/hj

cc:

