

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201278612
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 2, 2013
Ingham 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 Wednesday, January 2, 2013. Claimant appeared and provided testimony on her behalf with [REDACTED] of [REDACTED] Participants on behalf of the Department of Human Services (Department) included [REDACTED]

The hearing 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 substantial evidence on the whole record, finds as material fact:

1. Claimant's MA-P (3 months retro) /SDA application on April 25, 2012 was denied on July 9, 2012 per BEM 260/261, with a hearing request on September 6, 2012.
2. Vocational factors: Age [REDACTED] GED, and work experience as a semi-skilled building construction worker, auto mechanic, and US Army Course engineering work.
3. Claimant's last employment ended in June 6, 2005.
4. Claimant alleges disability due to medically diagnosed disorders of lung disorder, degenerative disk disease, myocardium infection, hepatitis b, and rheumatoid arthritis (DHS Exhibit A, Pg. 143).

6. Medical reports of exams state the claimant on:
- a. January 23, 2012: Denies palpitation, chest pain; that he did have *mild* shortness of breath; that he denies joint slowing; that he has a regular heart rhythm and rate with no murmurs; that he had a full range of motion in all joints; that his cranial nerve II-XII were *grossly intact*; that he had *no gross* motor and sensory *deficit*. (DHS Exhibit A, Pg. 45).
 - b. January 23, 2012: Has vertebral body heights that are *well-maintained*; that there was *slight* dextroscoliosis and *minimal*, that he has a *normal* lordosis; that aerated disc degeneration and facet hypertrophy range from *mild to moderate*; that he has *no significant* stenosis in the cord canal or foramina, although the latter are mildly atrophied by degenerative/hypertrophic changes; that there is *no significant* swelling of the vertebral soft tissue; that there are no signs of acute pathology; and that he mild/moderate degeneration in the cervical spine. (Claimant Exhibit 1, Pg. 65).
 - c. January 23, 2012: Has *mild* shortness of breath; that he has a regular heart rhythm and rate with no murmurs; that he has a *full range of motion* in all joints; that his cranial nerves II-XII are *grossly intact*; and that he has *no growths*, molders, or sensory deficit. (Claimant Exhibit 1, Pg. 83).
 - d. March 6, 2012: Has no angina, palpitations, murmur, dyspnea on exertion; that he has no shortness of breath, wheezing; that at musculoskeletal he has *no pain* or swelling; is in *no acute* distress; that he has a regular heart rate and rhythm with no murmur; that distant breath sounds are *minimally* decreased; that his strength is 4/5 of the right triceps compared to 5/5 strength throughout. (Claimant Exhibit 1, Pgs. 2 & 3).
 - e. May 2, 2012: His respiratory effort is *normal*; that he has a regular heart rate and rhythm with no murmurs, gallops, or rubs; that gait appears to have right hip and back pain on ambulation. (DHS Exhibit A, Pg. 11).
 - f. June 16, 2012: Is in no acute distress at rest; that his lungs were clear to auscultation bilaterally; that heart was *normal* at S1, S2 auscultation with no murmurs, quips, or rubs; that the Rhombberg test is *negative*; that he was *able to ambulate* without the examiner's assistance and without the use of any assistive devices; that he ambulates slowly; that he was able to squat and bend forward with assistance from the countertop; that he was unable to heel and toe walk without the examiner's assistance for balance; that straight-leg raise was positive both in the seated and supine

position in the right and left lower extremities at 30 degrees; he had a *full grip* and *full digital* dexterity; that he had a *normal range* of the lumbar spine, cervical spine, knees; that he was *able* to ambulate *without any* assistive devices, although he does ambulate slowly; that he was able to get on and off the examiner's table slowly; that he also has decreased range of motion with flexion and extension in his lumbar spine as well as decreased range of motion with extension of his cervical spine; that he has decreased muscle strength at 4/5 throughout. (DHS Exhibit A, Pgs. 139-141).

7. State Hearing Review Team decision dated November 2, 2012 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration.

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).

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 that he is disabled in accordance with the five step sequential evaluation below. ...20 CFR 416.912(a).

The burden of proof shifts to the DHS at step five20 CFR 416.994 (b)(1)(v).

Acceptable medical verification sources about your impairments are by an M.D. or D.O. or fully licensed psychologist. BEM260. Medical reports would include:

- Your ability to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling.
- 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 medical evidence of record established the Claimant has not been engaged in substantial gainful activities since June 6, 2005. Therefore the sequential evaluation is required to continue to the next step.

Step 2, disability is denied. The objective 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(s) 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 states the Claimant's medical examinations were normal; and that his impairments were *mild to moderate* (not severe).

The Claimant testified to disabling symptoms of body pain.

...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, 2011, per PA 1939, Section 9, Act 280.

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

Had Step two disability not already been denied; it would also have been denied at Steps 3 & 4.

At Step 3 the objective medical evidence of record, on date of application, does not establish the claimant's impairments meet/equal 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 (Findings 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** and so ORDERED.

William A. Sundquist

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

Date Signed: April 5, 2013

Date Mailed: April 5, 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:

