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

### IN THE MATTER OF:



Reg. No:201321909Issue No:2009Case No:April 11, 2013Ionia 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 Cla imant's request for a hearing. After due notice, an in person hearing was held on Thuerday; April 11, 2013. Claimant 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 applic ation October 29, 2012 was denied on January 3, 2013 per BEM 260, with a hearing request on January 14, 2013.
- 2. Vocational factors: Age 42, with a 12 <sup>th</sup> grade education, and past unskilled work experience
- 3. Claimant's last employment ended in February, 2012.
- 4. Claimant's alleged disabling symptoms are chronic numbness and tingling in back and legs; and chronic back pain.
- 5. Claimant alleged disa bling medical disorders are back pain and nerve problems. (DHS Exhibit A, Pg. 59).
- 6. Medical reports of exams state the claimant on:

- a. January 25, 2012: Has hand strength that is strong and equal; that shoulder strength is strong and equal; that she is less tender in the thoracic spine area; that she c an flex and extend her spine with less complaints of discomfort. (DHS Exhibit A, Pg. 52).
- b. July 12, 2012: Had a range of motion of the hip that was *unremarkable*; that s he is ambulating favoring the right. (DHS Exhibit A, Pg. 34).
- c. July 27, 2012: Her pa ssive range of motion was *unremarkable* although t here is some light touc h sensitivity over the postural lateral aspect of the right lower extremity. (DHS Exhibit A, Pg. 32).
- d. October 11, 2012: Is unable to flex the hip bilaterally, although s he is *able* to ambulate independently with a forward-flexed gait. (DHS Exhibit A, Pg. 23).
- e. October 12, 2012: Has a stable condition. (DHS Exhibit A, Pg. 21).
- f. October 17, 2012: That Claiman t has reported 100% reduction in hip pain, anterior right thigh pai n, and pain radiat ing around the lateral aspect of the knee; and t hat her pain had dissipated with intervention with an injection. (DHS Exhibit A, Pg. 26).
- g. October 17, 2012: Is, despite the pain, ambulating independently and at times favors the right lower extremity. (DHS Exhibit A, Pg. 27).
- h. January 3, 2013: Had grip st rength decreased on the left which could be related to effort; that sh e had a full range of motion of her shoulder; that her strength exam is +3/4; that she is ambulating at times favoring the right leg. (DHS Exhibit A, Pg. 55).
- i. March 28, 2013: Has some tightne ss in spasms noted in the upper trapezial paraspinous musculature; that some escalation of the pain is noted with range of motion of the neck; that her strength exam is somewhat limited due to the incr eased pain. (Claimant Exhibit 1, Pg. 4).
- 7. State Hearing Review Team decis ion dated February 15, 2013 states the Claimant's impairments do not meet/equal a Social Se curity listing for the required duration. (DHS Exhibit A, Pg. 59).

# CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established 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 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 sequentia I order. If dis ability 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).

2. Does the client have a severe impairment that has lasted or is expected t o last 12 months or more or result in death? If no, the cl ient is i neligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a spec ial listing of impairments or are the clie nt's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings spec ified for the listed im pairment? 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 anal ysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform oth er work ac cording to the guidelines set forth at 20 CFR 404, Subpar t P, Appendix 2, Sec tions 200.00-204.00? If yes, the anal ysis ends and the c lient is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

The claimant had the burden of proof to establish disability in accordance with steps 1-4 above... 20CFR 416.912 (a). The burden of proof shifts to the DHS at Step 5... 20CFR 416.960 (c)(2).

[In reviewing your impairment]...We need reports about your impairments from acceptable m edical sources.... 20 CFR 416.913(a).

Acceptable medical verification sources are licensed physicians, osteopaths, or certified psychologists ...20CFR 416.913(a)

...The med ical evidence...mus t be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

It must allow us to determine --

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capac ity to do w ork-related physical and mental activities. 20 CFR 416.913(d).

#### Step 1

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your m edical condition or your age, education, and work experience. 20 CFR 416.920(b).

The evidence of record established that the claimant has not engaged in substantial gainful activity since October, 2012. Therefore, the sequential evaluation is required to continue to the next step.

### Step 2

... [The re cord must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

**Basic w ork activities.** When we talk about basic work activities, we mean the abilities and aptitudes neces sary 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).

**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 bas ic work activities. 20 CFR 416.921(a).

...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).

The medic al reports of record are mostly examination, diagnostic, treatment and progress reports. They do not provide medi cal assessments of Cla imant's basic work limitations for the required dur ation. Stated differently, the me dical reports do not establish whether the Claimant is impaired mi nimally, mildly, m oderately (non-severe impairment, as defined above) or severely, as defined above for a one year c ontinuous duration.

The claimants disabling symptoms (Findings of Fact #4) are inconsistent with the objective medical evidence of record (Findings of Fact #6).

...Your sy mptoms, i ncluding pain, will be determined t o diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accept ed as consistent with the objectiv e medical evid ence and other evidence. 20 CFR 416.929(c)(4).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which s how that you have a medical impairment.... 20 CFR 416.929(a).

The medic al reports (Findings of Fact #6) state that Claimant's examinations were basically within normal limitat ions; that her impairments we re mild to moderate (not severe); and that her condition is stable and unremarkable (not deteriorating).

The Claimant has not sustained his burden of proof to establish a sev ere physical impairment in combination, instead of a non-severe impairment, for the required one year continuous duration.

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

Therefore, medical disability has not been established at Step 2 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 disability was not medically established.

Accordingly, MA-P denial is **UPHELD** and so ORDERED.

<u>/s/</u>

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

Date Signed: June 19, 2013

Date Mailed: June 19, 2013

### 201321909/WAS

**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.

cc:

WAS/hj