STATE OF MICHIGAN

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

IN THE MATTER OF:

Reg. No: Issue No: 2009; 4031 Case No: Hearing Date: June 27, 2013

201331855

Lapeer 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 Thursday; June 27, 2013. Claimant appeared and provided testimony on his behalf. Participants on behal f of the Department of Human Services (Department) included and

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 applied for MA-P/SDA on November 8, 2012, was denied on February 20, 2013 per BEM 260/261, and requested a hearing on February 27, 2013.
- th grade education, and factors: Age 39, with a 12 Vocational semi skilled work experience as a cook for a restaurant business.
- 3. Last employment ended December, 2009.
- 4 Disabling Symptoms: Chronic poor concentration, focus, and er, and chronic pain/numbness in feet.
- 5. Alleged disabiling medical disorder(s): Learning disability, mood disorder, organic br ain syndr ome, attention def icit hyperac tive disorder, and mathicillin-resistant staphylococcus aurbus (MERSH). (DHS Exhibit A, Pg 468).

6. Medical reports of exams state the claimant on:

September 5, 2012: Had a GAF score of 59. (DHS Exhibit A, Pg. 445).

September 19, 2012: Is oriented to person, place, time, and situation; that behavior is described as *unremarkable*; that psychomotor behaviors are *unremarkable*; that his affect is *appropriate*; that memory is *intact*; that he has *average* intellect; that reasoning is *good*; that judgment is *good*; that insight is *good*; that thought processes are *logical*; that thought content is *unremarkable*. (DHS Exhibit A, Pg. 442-443).

7. State Hearing Rev iew Team decision dated May 19, 2013 states the Claimant's impairments do not meet/equal a Social Se curity listing for the required duration. (DHS Exhibit A, Pg. 468).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity 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 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 are found in the Bridge es Administrative Manual (BAM), the Bridges Elig ibility Manual (B EM) 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, 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 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 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 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 according 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 effe cts 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 December, 2009. 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 basic 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 and are more than one y ear before date of application. They do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, the medical reports do not establish whether the Claimant is impaired minimally, mild ly, moderately (non-severe impairment, as defined above) or severely, as defined above for a one year continuous duration.

The claimants disabling symptoms (Findings of Fact #4) are inconsiste nt 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 accepted as consistent with the objective medical evidence 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).

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

Claimant had a GAF score of 59 in Septem ber, 2012. This is considered a moderate (not severe) mental impairment with occupational-functioning. DSM IV (4 th edition nevised).

The medical ev idence of rec ord has not established the Claimant's abnorm al mental/physical findings have persisted on a regul ar and continuing basis on repeated examinations for a reasonable e presumption to be made that a severe mental impairment has lasted or is expected to last for at least a one year continuous duration.

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The medic al reports (Findings of Fact #6) show that Claimant's examinations were within normal limitations; that his impairments were minimal to moderate (not severe); and that his condition is stable (not deteriorating).

The Claimant has not sustained his bur den of proof to es tablish a severe physical/mental 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.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the — State Disability As sistance program: to receive State Disability Assist ance, a person must be dis—abled, 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 u nder 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 di—sability criteria for State—Disability Assistance benefits either.

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 the above findings of fact and conclusions of law, decides disability was not medically established.

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

/s/

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

Date Signed: June 28, 2013

Date Mailed: June 28, 2013

NOTICE: Administrative Hearings may or der a re hearing 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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