

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20135808
Issue No: 2009
Case No: [REDACTED]
Hearing Date: February 26, 2013
County: Oakland 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 Tuesday; February 26, 2013. Claimant appeared and provided testimony on his behalf. 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/SDA application on July 30, 2012 was denied on October 3, 2012 per BEM 260/261, with a hearing request on October 12, 2012.
2. Vocational factors: Age 57, high school education, and past 15-year work experience of unskilled work in a sand-blasting shop, and skilled work as a plumber and plumber inspector.
3. Claimant's last employment ended April 22, 2010 due to a layoff; he became a UCB recipient with exhaustion on December 12, 2012.
4. Claimant's medically diagnosed disorder is depression.
5. Claimant's disabling symptom is poor concentration due to depression. (DHS Exhibit A, Pg. 166).

6. Medical reports of examinations state the claimant on:
 - a. April 11, 2012: Has a GAF score of 40. (DHS Exhibit A, Pg. 122).
 - b. April 30, 2012: Has a GAF score of 50 by an LMSW. (DHS Exhibit A, Pg. 176).
 - c. May 13, 2012: Is alert and oriented times three. (DHS Exhibit A, Pg. 130).
 - d. May 14, 2012: Has a GAF score of 55. (DHS Exhibit A, Pg. 64).
 - e. June 8, 2012: Has a GAF score of 50. (DHS Exhibit A, Pg. 50).
 - f. June 14, 2012: States the Claimant is moderately limited and markedly limited in the categories of understanding and memory, sustained concentration and persistence, social interaction, and adaptation and not significantly limited in the ability to ask simple questions or request assistance, and to travel in unfamiliar places or use public transportation. (DHS Exhibit A, Pgs. 51 & 52).
 - g. August 16, 2012: Is either not significantly limited, moderately limited or no evidence of limitations and not markedly limited in any categories. (DHS Exhibit A, Pg. 104).
 - h. August 16, 2012: Has a GAF score of 55. (DHS Exhibit A, Pg. 4).
7. State Hearing Review Team decision dated December 14, 2012 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 166).

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 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 sources about your impairments are an M.D. or D.O. or fully licensed psychologist... BEM 260. 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)(c)(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 engaged in substantial gainful activities since April 22, 2010. Therefore, the sequential evaluation is required to continue to the next step.

Step 2, disability is denied. The object 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 mental impairment 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).

During a five month period, the Claimant had GAF scores of 40 in April, 55 in May, 50 in June, and 55 in August, 2012. Scores of 50 and under are considered a severe mental impairment with occupational functioning, while scores of 51-55 show a moderate (not severe) mental impairment with occupational-function. DSN-IV (4th Edition-Revised).

The medical evidence of record does not establish that the Claimant's abnormal mental findings have persisted on repeated examinations for the reasonable presumption to be made that a severe mental impairment has lasted or is expected to last for at least one continuous year.

In addition, Claimant received unemployment compensation benefits before, on and after his Medicaid application. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible, they must be totally or partially unemployed, they must have an approval of job separation. Also, they must meet certain legal requirements which include being physically and mentally able to

work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that Claimant has not established that he has a severe impairment or combination of impairments which have lasted or will last 12 months or more or have kept him from working for 12 months or more.

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.

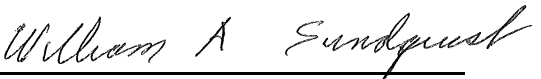
Therefore, the sequential evaluation is required to stop at Step 2.

The Claimant has not sustained his burden of proof to establish disability 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
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 24, 2013

Date Mailed: April 25, 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:

