

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 20139000  
Issue No: 2009; 4041  
Case No: [REDACTED]  
Hearing Date: February 20, 2013  
St Clair 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, a telephone hearing was held on Wednesday, February 20, 2013. Claimant appeared and provided testimony on her behalf with [REDACTED] and [REDACTED]. 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 (3 months retro)/SDA application on August 13, 2012 was denied on October 11, 2012 per BEM 260/261, with a hearing request on October 23, 2012.
2. Vocational factors: Age [REDACTED] high school or more education, and past 15-year work experience as an unskilled internal car roof installer, and phone reception of customers resolve regarding simple computer problems, semi skilled high-low driver and, car dealer porter and skilled work as a semi-truck driver.
3. Claimant's last employment ended in January, 2013.
4. Claimant claims medically diagnosed disorders are neck/back pain, left foot fracture, hypertension, diabetes, and neuropathy. (DHS Exhibit A, Pg. 228).

5. Claimant's disabling symptoms are chronic pain throughout whole body, back spasms, left foot numbness, weakness and tingling sensation radiating down left arm and leg; and that he is limited to lifting/carrying ten pounds.
6. Medical reports of exams state the claimant on:
  - a. September 17, 2011: Has no acute fracture or dislocation of the left foot; and that the soft tissues are normal. (DHS Exhibit A, Pg. 58).
  - b. September 26, 2011: States the claimant can return to restricted work on September 26, 2011 limited to a sit down type of work with the use of crutches; vertebrae body heights and alignments are *well maintained* in the cervical spine; the bone mineralization is *unremarkable*; that the cranial vertebrae junction is within normal limits; and that there is mild spondylitic spurring at L3, L4, and L5.
  - c. December 27, 2011: States the claimant is unable to work due to neck, back, and lower extremity injury. (DHS Exhibit A, Pg. 65).
  - d. October 10, 2011: Bone and articular structures appear intact for the left foot; can return to restrictive work on October 10, 2011. (DHS Exhibit A, Pg. 61).
  - e. December 22, 2011: Has a slight thoracic scoliosis; that the thoracic rotary motions are *full*; that the cervical spine motions are full; that straight leg raising was negative; that the neurologic exam showed normal strength in uppers and lowers; he was able to ambulate in the exam room as well as the office with the use of walking crutches. (DHS Exhibit A, Pg. 22).
  - f. January 31, 2012: Has a very limited stance phase if at all on the left foot. (DHS Exhibit A, Pg. 31).
  - g. March 6, 2012: Does a sit down job with restrictions of frequently lifting ten pounds and occasionally lifting twenty.
  - h. April 5, 2012: Is currently working and needs no more therapy; that his lumbar spine has mild spondylitic spurring. (DHS Exhibit A, Pg. 69-70).
  - i. April 17, 2012: Is employed full-time; that exam of neck reveals no abnormalities. (DHS Exhibit A, Pg. 72-73).
  - j. May 17, 2012: Has good function, range of motion of the cervical spine; that his heel walking is negative bilaterally; that his left foot x-ray on September 17, 2011 is considered to be normal and

condition negative and that he is able to return to work without restriction. (DHS Exhibit A, Pgs. 102-113).

- k. June 14, 2012: Has a normal disc appearance; that he has mild degenerative disc disease; that he has moderate degenerative disc disease. (DHS Exhibit A, Pg. 80).
  - l. August 23, 2012: Walks with an antalgic gait with decreased time and weight bearing on the right lower extremity; that he has normal heel and toe however this elicits left foot pain; that he is able to perform a 50% squat with return to upright; that he has normal single leg stance; that motor strength of the bilateral lower extremities hip function is 4/5 bilaterally. (DHS Exhibit A, Pg. 15).
7. State Hearing Review Team decision dated January 7, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 16).

### **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 in accordance with the 5 step process below. ...20 CFR 416.912(a).

The burden of proof shifts to DHS at step 5... 20 CFR 416.912(b)

Acceptable medical sources about your impairments are an M.D. or D.O. or fully licensed psychologist. 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)(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).

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

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

Step 1, disability is denied. The objective evidence of record establishes the Claimant has engaged in full-time substantial gainful activity without restriction as of April/May, 2012. Therefore the sequential evaluation is not required to continue to the next step.

If disability has not already been denied at Step 1, it would also have been denied at Step 2. 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 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 states the Claimant's medical examinations were normal and/or unremarkable; that his impairments were mild to moderate (not-severe) and that his condition has improved (not deteriorating).

The medical evidence of record before the application (August 13, 2012) states that the claimant returned to work on September 26, 2011 with a work note and thereafter was off work for a short period due to a "sprain-and-fall". Thereafter, on May 17, 2012 Claimant's physician stated that he is able to return to work without restrictions.

In October, 2011 the medical evidence shows the claimant's left foot was intact and normal; that he could return to a sit-down type of work with frequent lifting of ten pounds and occasionally 20 pounds; and that he could use crutches as needed.

In June, 2012 claimant's impairments were considered mild to moderate (not-severe).

Therefore, on date of application (August 13, 2012) the objective medical evidence of record has not established a severe physical impairment that had lasted for the required one year continuous duration.

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.

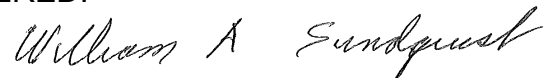
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under 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 disability criteria for State Disability Assistance benefits either.

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  
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.

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