

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201310539
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: February 28, 2013
County: 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, a telephone hearing was held on Thursday; February 28, 2013. Claimant appeared and provided testimony on her behalf with her representative, [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) application on July 14, 2012 was denied on October 23, 2012 per BEM 260/261, with a hearing request on November 5, 2012.
2. Vocational factors: Age 58, 3rd grade education, and past 15-year work experience as an unskilled boxing of food and operating a cash register for Kentucky Fried Chicken, food preparer at Michigan State University, and janitorial work. (DHS Exhibit A, Pg. 11).
3. Claimant's last employment ended in 2004.
4. Claimant alleges disability due to fibromyalgia and pain in hip and foot from arthritis. (DHS Exhibit A, Pg. 30).
5. Claimant's disabling symptoms are chronic pain from standing too long and walking around too long, intermittent dizzy spells, and chronic pain in hips and radiating down legs.

6. Medical reports of exams state the claimant on:
 - a. September 6, 2011: Her reflexes are *normal*; coordination is *normal*; musculature posture is normal, strength against resistance is *normal*; musculature exam of the back is *normal*; exam of lower legs, bilaterally is *normal*; that ankles and/or feet are *normal*. (DHS Exhibit A, Pg. 93).
 - b. December 9, 2011: Has *normal* gait and stance; she has full range in motion to all four extremities without restriction; that she has musculature normal exam of the back; that she has no swelling of the right knee; that she had a *normal* exam of the leg bilaterally; that she had decreased function of the right hip; that she had decreased extension of the right hip; that she had decreased internal rotation of the right hip; that she had abnormal function and extension of the right knee. (DHS Exhibit A, Pg. 87).
 - c. June 1, 2012: Is in no acute distress; that she is well-nourished and developed. (DHS Exhibit A, Pg. 111).
 - d. September 24, 2012: Has slow range of motion of the neck, back, shoulders, hands, wrists, knees, ankles, and feet; that she can ambulate slowly in and out of a chair; on and off the exam table with *mild* discomfort; that she has significant pain in both hips and significant decreased range of motion in both hips; that she has *moderate* decreased range of motion and pain with the right knee and to a much lesser extent, the left knee; that cranial nerves II-XII are grossly *intact*. (DHS Exhibit A, Pg. 4).
7. State Hearing Review Team decision dated January 12, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 129).

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 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 2004. 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) regarding chronic pain from standing and walking too long and intermittent dizzy spells, are not supported by the objective medical evidence of record (Findings of Fact #6).

The medical evidence states the Claimant's medical exams were mostly normal; and that her impairments were *mild* (not severe).

...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.

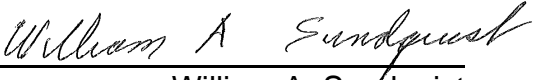
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 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 her 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 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:

