

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201313153  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Hearing Date: March 13, 2013  
Manistee 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; March 13, 2013. Claimant appeared and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [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 September 12, 2012 was denied on November 13, 2012 per BEM 260/261, with a hearing request on November 14, 2012.
2. Vocational factors: Age [REDACTED] 9<sup>th</sup> grade education, and past 15 years of unskilled work as a foundry worker and security guard requiring sitting/standing and observing public campgrounds, and semi-skilled work as a plastic injection molder and supervisor.
3. Claimant's last employment ended three years ago.
4. Claimant alleges disability due to L5 and L7 fracture vertebrae.
5. Claimant's disabling symptoms are chronic pain around waist wrapping around to back and down both legs.
6. Medical reports of exams state the claimant on:

- a. August 2, 2012: Has no para vertebrae muscle spasm or tenderness to palpitation of the lumbar spine; that hip examination reveals no tenderness or atrophy; that knee examination reveals no crepitation, tenderness, swelling, effusion, laxity, or nodules; that strength of knee function is 3/5 on the right and 5/5 on the left; that sensation is intact to light touch and pinprick throughout; that there is no evidence of muscle atrophy; that motor strength is *normal* at 5/5; that cerebellar exam is *normal*; that Romberg and downward drift and *normal*; that he has the ability to sit, stand, bend, stoop, carry, push, pull, button close, tie shoes, dress-undress, use telephone, open door, make a fist, pick up a coin off the table, pick up a pencil off the table, write with dominant hand, squat-rise from squat, get on and off exam table, and climb stairs; that based on exam, the claimant should *be able* to work eight hours in a day; that he should be able to work in a seated or standing position with a frequent opportunity change in position and regular breaks, with *unlimited* walking; that he should be able to push, pull, lift, or carry 30 pounds *frequently* and 50 pounds *occasionally*; that he should be *able* to use bilateral hands for fine and gross manipulation or reaching, handling, feeling, grasping, and fidgeting continuously; that he has *no limitations* in climbing stairs; that he has no driving limitations. (DHS Exhibit A, Pgs. 26-29).
  - b. October 6, 2012: Walked with a *mild* limp on the right; that there is no joint instability, enlargement, or effusion, that grip strength remains *intact*; that dexterity is *unimpaired*; that he could pick up a coin, button clothing, and open a door; that he has *no difficulty* getting on and off the examination table; the range of motion of the dorsal lumbar spine is *normal*; that motor strength and function is *normal*; that sensory function remains *intact*; that reflexes are *intact* and symmetrical; that Romberg testing is *negative*; that there is no reflex incontinence, motor weakness, or sensory loss. (DHS Exhibit A, Pgs. 8-9).
7. State Hearing Review Team decision dated January 30, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg.44).

### **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).

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.

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)

...The medical evidence...must 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 capacity to do work-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 medical 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 for three years. Therefore, the sequential evaluation is required to continue to the next step.

### **Step 2**

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

**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).

**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).

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, the medical reports do not establish whether the Claimant is impaired slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above.

The claimant's disabling symptoms (Findings of Fact #5) are inconsistent with the objective medical evidence of record (Findings of Fact #6).

...Your symptoms, including pain, will be determined to 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).

The medical evidence of record shows that the examinations were normal and unremarkable; that his impairment was 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).

The claimant has not established his burden of proof to establish a severe mental impairment, instead of a non severe impairment, for the required 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.

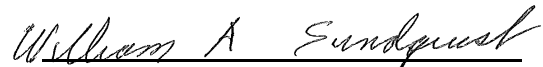
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p.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



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

Date Signed: April 17, 2013

Date Mailed: April 17, 2013

201313153/WAS

**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:

