

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201317091
Issue No: 2009
Case No: [REDACTED]
Hearing Date: March 14, 2013
Tuscola 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; March 14, 2013. Claimant appeared and provided testimony on his behalf with [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 application on August 16, 2012 was denied on October 18, 2012 per BEM 260, with a hearing request on October 26, 2012.
2. Vocational factors: Age [REDACTED] 10th grade education, and past 15 years of semiskilled cashier work and food service work helping a head cook and preparing soup and sandwiches, and a skilled certified nurses aide.
3. Claimant's last employment ended on July 21, 2012.
4. Claimant alleges disability due to perferial vascular disease, irregular heartbeat, arthritis throughout body, diarrhea, and anxiety. (DHS Exhibit A, Pgs. 5, 68, & 81).
5. Claimant's disabling symptoms are nervousness, anxiousness, chronic panic attacks, and don't like to be around people; that she has chronic

swelling in legs/feet, irregular bowel syndrome, chronic diarrhea, stomach pain, and limited to lifting/carrying one gallon of milk.

6. Medical reports of exams state the claimant on:
 - a. October 10, 2011: Has a *normal* range of motion, *normal* gait; that she is alert and oriented; that she has an *appropriate* mood and effect. (DHS Exhibit A, Pg. 43).
 - b. July 25, 2012: Has normal ambulatory status; that she is alert, oriented and *fully* verbal; that she is able to respond to commands; that she is able to move all extremities; that she has a regular cardiac rate and rhythm; that she had a *normal* lower extremity exam without edema or tenderness; that she has no extremity tenderness; that her mood and affect are *normal*; that claimant denies heart racing or palpitations; that she denies any significant muscle aches or joint pains; that her heart S1, S2 has no murmur or gallop; that she is alert and oriented to person, place, time, and situation; that she is calm and *appropriate* with good *insight*; that her range of motion is *normal*; that her gait is *normal*; that she is cooperative and has an appropriate mood and effect; that she has *normal* bowel sounds; that she has a *normal* range of motion and *normal* strength. (DHS Exhibit A, Pgs. 26-33).
 - c. July 31, 2012: Has normal range of motion and strength; that she is alert and oriented; that she was cooperative and had an appropriate mood and affect. (DHS Exhibit A, Pg. 57).
 - d. January 9, 2013: Is ambulatory without any walking aide; that she is able to touch her toes and able to squat completely; that arterial pulses are normal; that her left leg is swollen from groin to foot; that right leg has no swelling; that lumbar area is not tender; that there are no muscle spasms present; that straight-leg raising test is negative bilaterally; that her hand grip is 40 pounds bilaterally; that she is able to open a job, button clothing, write legibly, pick up a coin, and tie shoelaces with either hand; that she has significant problems in standing for a long time because the leg swells up and both feet start burning because she has varicose veins; that she has no arthritis in the knee joints clinically; that she has *normal* range of motion; that she has irritable bowel syndrome by history; that she has alternating constipation and diarrhea, most of the time diarrhea; that she is able to sit, stand, bend, stoop, carry, push, pull button clothes, tie shoes, dress-undress, dial telephone, open door, make fist, pick up coin, pick up pencil, write, squat and arise from squatting, get on and off examination table, climb stairs; that she is able to walk in tandem; that her gait is stable and within normal limits; that she does not need support with a walking aide; that she

has a normal range of motion of the lumbar spine and knees. (DHS Exhibit A, Pgs 74-79).

- e. January 14, 2013: Has a GAF score of 60. (DHS Exhibit A, Pg. 69).
- 7. State Hearing Review Team decision dated February 2, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 81).

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).

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 since July 21, 2012. 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).

...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).

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 objective medical evidence of record establishes the Claimant's GAF of 60 in January, 2013. This is considered a moderate (not severe) mental impairment with occupational function. DSM-IV (4th edition-revised.) The objective medical evidence of record is inconsistent with the claimant's disabling physical symptoms. For the most part her examinations were normal with no significant physical restrictions.

The claimant alleges disabling pain in her body.

...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 sustained her burden of proof to establish a severe mental/physical impairment in combination, 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.

If disability had not already been denied at Step 2, it would also have been denied at Steps 3 and 4.

Step 3

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering

your age, education, and work experience. 20 CFR 416.920(d).

The claimant introduced no objective medical evidence of record that his impairments meet/equal a Social Security listing.

Step 4

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

...We consider that your work experience applies when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 years or more before the time we are deciding whether you are disabled applies.... 20 CFR 416.965(a).

The claimant introduced no objective medical evidence of record of a severe impairment(s) and inability to do past work.

Therefore, medical disability has not been established at Step 2 and also would not have been established at Steps 3 & 4 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

201317091/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:

