

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201325714
Issue No: 2009
Case No: [REDACTED]
Hearing Date: June 12, 2013
Kent 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, an in person hearing was held on Wednesday; June 12, 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 application July 26, 2012 was denied on January 4, 2013 per BEM 260, with a hearing request on January 22, 2013.
2. Vocational factors: Age 55, with a high school or more education, and unskilled/semiskilled work experience.
3. Claimant's last employment ended in June, 2008.
4. Claimant's alleged disabling symptoms are difficulty concentrating and short term memory loss; fatigue, chronic pain in upper chest radiating head level, and limited to lifting/carrying ten pounds.
5. Claimant alleged disabling medical disorders are depression, fibromyalgia, and chronic fatigue. (DHS Exhibit A, Pg. 157).
6. Medical reports of exams state the claimant on:

- a. January 3, 2011: Has a GAF score of 57. (DHS Exhibit A, Pg. 81).
 - b. November 7, 2012: Has a GAF score of 49. (DHS Exhibit A, Pg. 20).
 - c. November 27, 2012: Is cooperative in answering questions and following commands; that his mental status is *normal*; that his immediate, recent, and remote memory is *intact* with *normal* concentration; that his insight and judgment are both *appropriate*; that there is *no evidence* of joint laxity, crepitation, and 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, *no difficulty* heel and toe walking, *no difficulty* squatting, and *no difficulty* hopping; that range of motion was *normal* for the cervical spine, dorsal lumbar spine, shoulders, elbows, hips, knees, ankles, wrists, and hands-fingers; that cranial nerves are *intact*; that motor strength is *intact*; that muscle tone is *normal*; that reflexes are *intact* and symmetrical; that he walks with a *normal* gait without the use of an assistive device; that his most significant ailment is his neurocognitive function where he has difficulty with memory and concentration; he appears *mildly* depressed; that physically he did appear relatively *stable*; that he had no difficulty performing orthopedic maneuvers. (DHS Exhibit A, Pg. 10-13)
 - d. January 24, 2013: Had no difficulty getting on and off the exam table, heel and toe walking, squatting or hopping; that his gait was *normal*; that range of motion of ball joints checked is full; that straight leg raise is negative bilaterally; that he had some tenderness consistent with the trigger points of fibromyalgia; that grip strength is *normal* as tested *grossly*; that hands have *full* dexterity bilaterally; that strength is 5/5 throughout; that motor and sensory function remains *intact*; that Romberg test is negative; that cranial nerves II-XII are grossly *intact*; that he is alert and oriented to person, place, and time; that reflexes are present and symmetrical; he has no disorientation. (DHS Exhibit A, Pg. 154-155).
 - e. February 9, 2013: Has a GAF score of 55-60. (DHS Exhibit A, Pg. 152).
7. State Hearing Review Team decision dated April 1, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 157).

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).

The claimant had the burden of proof to establish disability in accordance with steps 1-4 above... 20CFR 416.912 (a). The burden of proof shifts to the DHS at Step 5... 20CFR 416.960 (c)(2).

[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 June, 2008. 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 minimally, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above for a one year continuous duration.

The claimant's disabling symptoms (Findings of Fact #4) 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).

...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).

Claimant had a GAF score of 57 in January, 2011, 49 in November, 2012 and 55-60 in February, 2013. 49 is considered a severe mental impairment with occupational functioning, and 51-60 a moderate (not severe) mental impairment with occupational functioning. DSM-IV (4th edition- revised).

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

The medical reports (Findings of Fact #6) state that Claimant's examinations were within normal limitations; that his impairments were mild to moderate (not severe); and that his condition is stable (not deteriorating).

The Claimant has not sustained his burden of proof to establish a severe mental impairment in combination, instead of a non-severe impairment, for the required one year continuous duration.

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

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.

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

Date Signed: June 19, 2013

Date Mailed: June 19, 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:

