

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 200924539
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 27, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 27, 2009.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

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 applied for MA-P and SDA on January 30, 2009.
- (2) Claimant is 37 years old.
- (3) Claimant has a high school education with some medical assistant training.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of unskilled work, including home care service, temporary service, group home service, and food delivery.
- (6) Claimant has been diagnosed with cervical myelopathy, anxiety disorder, and bipolar disorder.
- (7) In October, 2008, claimant was involved in a bicycle accident and suffered a neck trauma.
- (8) On January 18, 2009, claimant was admitted into [REDACTED] [REDACTED] with complaints of gait imbalance and difficulty walking. Claimant reported experiencing weakness in her extremities and urinary incontinence. Claimant was diagnosed with cervical myelopathy.
- (9) MRI of claimant's cervical spine showed a large disk osteophyte complex at C6-C7 causing compression, a disk herniation at C5-C6 causing moderate amount of cord compression, and signal changes in the region of C5 through C7 of claimant's cord.
- (10) Motor strength test showed claimant has grossly weak motor strength in her upper extremities and weakness in her legs. Claimant also has reduced pin and vibratory sensation in her left lower extremity.
- (11) A DHS-49, Medical Examination Report, was completed by claimant's neurosurgeon on [REDACTED].
- (12) Claimant is unable to lift or carry objects. Claimant only retains the capacity to stand and/or walk less than 2 hours in an 8-hour workday. Claimant is able to use both hands/arms for simple grasping and fine manipulation; however, claimant is unable to use either hand/arm for reaching, pushing and pulling. Claimant is unable to use either foot/leg.

- (13) A DHS-49, Medical Examination Report, was completed by claimant's internist on [REDACTED].
- (14) Claimant retains the capacity to lift up to 10 lbs occasionally, and no amount of weight frequently. Claimant is able to stand and/or walk less than 2 hours in an 8-hour workday, and sit for about 6 hours. Claimant does require and need an assistive device for ambulation. Claimant is unable to use either of her hands/arms for any form of manipulation, including simple grasping and fine manipulation.
- (15) A DHS-49, Medical Examination Report, was completed by claimant's treating physician on [REDACTED].
- (16) Claimant only retains the capacity to lift less than 10 lbs occasionally. Claimant is only able to stand and/or walk for less than 2 hours in an 8-hour workday. Claimant is unable to use any of her extremities, including the use of her hands/arms for manipulation and the use of her feet/legs. Claimant requires an assistive device for ambulation.
- (17) Claimant's treating source also completed a DHS-54A, Medical Needs, on [REDACTED].
- (18) Claimant's treating source states in this form that claimant has cervical myelopathy with quadriparesis, ataxic gait, and pain. The treating source opined that claimant will not be able to engage in any job for at least 2 years.
- (19) A psychological exam obtained by the Department in response to claimant's application diagnosed claimant with bipolar disorder with depression and claustrophobia, stating that claimant's work history was affected by her depressive episodes.

- (20) Claimant was given a GAF of 45 to 48 with a guarded prognosis.
- (21) Claimant has a history of suicidal attempt by overdose and hypomanic symptoms. Claimant also suffered from typical symptoms of depression, including crying spells, low energy and social withdrawal.
- (22) On March 24, 2009, the Medical Review Team denied MA-P and SDA.
- (23) On April 5, 2009, claimant filed for hearing.
- (24) On June 10, 2009, the State Hearing Review Team denied MA-P, Retro MA-P and SDA.
- (25) On August 27, 2009, a hearing was held before the Administrative Law Judge.
- (26) After admission of new evidence, claimant's claim was returned to the State Hearing Review Team for redetermination.
- (27) On March 30, 2010, the State Hearing Review Team denied MA-P, Retro MA-P and SDA.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 Program Administrative

Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

Disability is defined as 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented more than sufficient evidence of a spine disorder that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant's treating sources all state that claimant has restrictions in her functional capacities to do physical activities, including carrying, lifting, walking, standing, and the use of her extremities. Furthermore, claimant has a history of suicide attempts by overdose and crying spells. The Administrative Law Judge finds that these are significant impairment to claimant's performance of basic physical work activities, and are therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, we must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404.20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment.

After considering the listings contained in Section 1.00 (Musculoskeletal), the Administrative Law Judge finds that the claimant's medical records does contain medical evidence of an impairment that meets or equals a listed impairment.

Appendix 1 of Subpart P of 20 CFR 404, Section 1.00 has this to say about spine disorders:

1.04 Disorders of the Spine: (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg rising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

In order to meet or equal the listings for spine disorder, a claimant must either meet or equal the recommended listings contained in the A, B, or C criteria. After examination of the B and C criteria, the undersigned holds that claimant does not meet these listings. However, a careful examination of claimant's medical records supplied from a treating source shows claimant meets the A criterion.

On [REDACTED], claimant was admitted into [REDACTED] with complaints of gait imbalance and difficulty walking. Claimant reported falling on several occasions after losing her balance. MRI of claimant's cervical spine showed a large disk osteophyte complex at C6-C7 causing compression, a disk herniation at C5-C6 causing moderate amount of cord compression, and signal changes in the region of C5 through C7 of claimant's cord.

On [REDACTED], claimant underwent a physical examination. Claimant complained of neck pain, but denied lower back pain. However, claimant had Babinski sign more

pronounced on her right lower extremity than her left, and claimant had a right sided Hoffmann sign as well. Claimant had decreased right grip strength, wrist extension, knee extension, ankle dorsiflexion, and knee flexion. Strength was generally 3/5 throughout claimant's right lower extremity muscles. Further, claimant has weakness in her distal upper extremity with spastic tone, pathologic reflexes, reduced pin and vibratory sensation in her left lower extremity, and greater reduced pin in her left trunk than right trunk.

Consistent with these findings, claimant's treating sources opined that claimant has severe limitations in her ability to lift, carry, stand, and walk. Additionally, claimant has severe limitations in her ability to manipulate with her hands/arms and use her feet/legs. Claimant requires an assistive device for ambulation.

As claimant exhibited signs of nerve root compression in the region of C5 through C7, and motor and sensory loss in her extremities, the Administrative Law Judge holds that the claimant meets the A criteria in the listings for spine disorder.

As claimant meets the A criterion, the Administrative Law Judge holds that claimant meets or equals the listings contained in Section 1.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

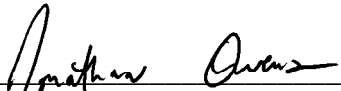
With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are

found in PEM 261. As claimant meets the federal standards for SSI disability, as addressed above, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is medically disabled as of January 2009.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated January 30, 2009, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. The Department shall set this case for review in August 2011.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/13/10

Date Mailed: 07/13/10

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.

JWO/dj

cc:

