

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: 200926572  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 25, 2009  
Montmorency County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 25, 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 March 2, 2009.
- (2) Claimant is 61 years old.
- (3) Claimant has a high school education and an Associate's Degree in Bookkeeping and Accounting.

- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of being an elected [REDACTED], [REDACTED], owning and managing her own small business, bookkeeping and other general office duties that a clerk would perform.
- (6) Claimant performed these jobs at the sedentary exertional level.
- (7) A November 3, 2007 evaluation by claimant's treating source state that claimant had significant compression of the spinal cord with deformation into a comma shape.
- (8) On [REDACTED], claimant underwent surgery for this injury and subsequently entered physical therapy.
- (9) Claimant's injury manifests with pain in the neck and shoulder, in addition to intermittent pain that radiates down her right arm, documented by several treating sources. Pain from these injuries ranges from a 3-5 on the pain scale, with medication, to a 7-10 after exertional activities or without medication.
- (10) Claimant is right handed.
- (11) Claimant has been proscribed several narcotics to deal with this pain.
- (12) Claimant's functional capacity is extremely limited and only retains the capacity to lift less than 10 lbs occasionally; should not stand or walk less than 2 hours in an 8-hour workday; should not sit more than 6 hours in an 8-hour workday; and retains no capacity for reaching, pushing or pulling.
- (13) In July 2008, claimant was in a car accident, according to medical reports. This accident exacerbated her remaining injury.

- (14) Claimant's treating source stated in a report from January 2009 that claimant has symptoms of both foraminal stenosis and radiculitis, likely caused by cervical radiculopathy (herniated disc).
- (15) Claimant is unable to do many activities of daily living, including driving, grocery shopping, and some housekeeping, without assistance.
- (16) On April 13, 2009, the Medical Review Team denied MA-P and SDA, stating that claimant was capable of performing past work under the Medical/Vocational rules found at 20 CFR 416.967(b).
- (17) On May 18, 2009, claimant filed for hearing.
- (18) On July 2, 2009, the State Hearing Review Team denied MA-P, Retro MA-P (though claimant did not apply) and SDA, stating that claimant was capable of performing past work.
- (19) On August 25, 2009, a hearing was held before the Administrative Law Judge.

#### 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 (6<sup>th</sup> 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 medical evidence of chronic pain in the neck and shoulder, in addition to intermittent pain that radiates down her right arm, documented by several treating sources. Claimant has persistent symptoms of both lumbar radiculitis and foraminal stenosis, according to the great weight of the evidence by both the Department and claimant’s treating sources. The Administrative Law Judge finds that this is a significant impairment to claimant’s performance of basic physical work activities, specifically walking, standing, sitting, lifting, pushing, pulling, reaching, carrying and handling, and is 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 impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 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 do not contain medical evidence of an impairment that meets or equals a listed impairment. Although her condition appears to resemble the condition described in 1.04(C), the medical records do not indicate that she has an inability to ambulate effectively, as defined in 1.00(B)(2)(b). Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) the individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to

perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at her PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.



Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, it is undisputed that claimant's persistent back pain has severely limited her ability to do work related activities. Claimant has been diagnosed with cervical radiculopathy (herniated disc). Claimant's treating sources have also indicated that she suffers from both foraminal stenosis and radiculitis, which are known to be associated with and oftentimes caused by a herniated disc. Claimant's herniated disc is located in her neck. Claimant has testified that she feels radicular pain in her extremities and the great weight of evidence substantiates her claim. In claimant's case, the affected extremity is normally her right arm, though it appears that sometimes similar pain is felt in her lower extremities. She is right-handed. The pain affects her ability to lift, carry, push or pull any significant amount of weight. In addition to the pain in her arm, the pain from the herniated disc in her neck travels down her spine to give her lower back pain that radiates into her lower extremities. It is this pain that affects claimant's ability to sit, stand and walk.

Claimant is able to do most activities of daily living including cooking, shopping, and some housekeeping, though she does require assistance from her partner. Claimant reports no trouble with personal grooming.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering the functions of reaching, pushing, pulling, carrying and lifting. Furthermore, claimant has limitations in walking, standing, and sitting. Claimant should avoid climbing. Claimant has few or no postural limitations (e.g. stooping), visual limitations or communicative (hearing, speaking) limitations.

Claimant has also made allegations of disabling pain. When considering pain, there must be an assessment of whether the claimant's subjective complaints are

supported by an objective medical condition which can be expected to cause such complaints. 20 CFR 416.929, *Rogers v. Commissioner*, 486 F. 3d 234 (6<sup>th</sup> Cir. 2007). An assessment must be done to consider whether objective medical evidence confirms the severity of the alleged pain or whether the objectively established medical condition is of such a severity that it can reasonably be expected to produce the alleged disabling pain. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (1986); *Felisky v Bowen*, 28 F3d 213 (6<sup>th</sup> Cir, 1994). Furthermore, the adjudicator must evaluate the intensity, persistence and limiting effects of the symptoms on the claimant's ability to do basic work activities, i.e. daily activities, location duration, frequency, intensity of symptoms, aggravating and precipitating factors, type, dosage effectiveness, and side effects of any medications, and any other treatment undertaken to relieve symptoms or other measures taken to relieve symptoms such as lying down. *Rogers*.

In this case, medical evidence from claimant's treating sources confirms the existence of a condition which can be expected to cause complaints of pain. The specific nature of claimant's injury indicates radicular pain throughout both lower extremities and down her right arm, a condition which often results in extreme, sometimes disabling pain without the aid of medication. Furthermore, claimant complains that the side effects of her prescribed pain medication affect her ability to do PRW, specifically in regards to her memory and concentration level. Claimant's treating sources confirm claimant's credibility regarding the complaints of pain, and further state that claimant's injury is one as such that may cause disabling pain. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner*, 473 F. 3d 742 (6<sup>th</sup>

Cir. 2007). The undersigned sees no reason to discount claimant's treating source opinions.

Therefore, after careful review of claimant's medical record and the Administrative Law Judge's interactions with claimant at the hearing, the undersigned finds that claimant's medical condition is of such a severity that it can reasonably be expected to produce claimant's complaints of disabling pain.

With regard to the complaints of pain, claimant expressed familiarity with the pain scale. Claimant reported her pain to be around a 3-5 on the scale with the medications, depending on the day and the circumstances. Other times, claimant reported her pain to be around a 7-10 on the scale without the medications. This is particularly important because the evidence presented indicates that claimant's medications have more than a nominal impact on claimant's ability to perform basic work functions.

The evidence indicates that claimant takes Vicodin in the amount of 750mg up to six times per day; Darvocet, three times per day; and Motrin 800, as needed. All three of these medications have common side effects of drowsiness, somnolence, and sedative-hypnotic states. These medications are known to severely limit an individual's ability to maintain concentration, persistence, pace, and affect; they can also impair memory, and can affect the ability to sustain gainful activity. Claimant has reported all these side effects. Claimant has also complained of "medicine fog" and feeling "disconnected." Claimant has been restricted from driving while taking the medications. Claimant's medical treatment plans approved by her doctors and pain management specialist include taking the medications. Claimant credibly testified at hearing that she did not

take these medications when working, because of the impact they had on the ability to do her job.

The Administrative Law Judge therefore concludes that claimant also has functional limitations resulting from her symptoms that affect her abilities to understand, carry out and remember instructions, and maintain concentration, persistence and pace.

Claimant's PRW includes being an elected county road commissioner, owning and managing her own small business, bookkeeping and other general office duties that a clerk would perform. These jobs as typically performed and as described by the claimant involve the use of both arms. Several of the jobs require maintaining concentration, persistence and pace. In addition, these jobs require organizational skills unimpeded by the effects of narcotic medications. Therefore, given the functional requirements as stated by claimant (which is consistent with how these jobs are typically performed) for each of those jobs, and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does not retain the capacity to perform her past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and

- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the

existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (*20 CR 404, Appendix 2 to Subpart P, Section 200-204 et. seq*) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the

principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is sixty-one years old, with an Associate's Degree and prior work experience performed at the sedentary and light exertional levels. Treating sources have indicated that claimant's functional capacity is limited, and she only retains the capacity to lift less than 10 lbs occasionally, should not stand or walk less than 2 hours in an 8-hour workday, should not sit more than 6 hours in an 8-hour workday, and retains no capacity for reaching, pushing or pulling. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting



the opinion. *Rogers; Bowen v Commissioner*, 473 F. 3d 742 (6<sup>th</sup> Cir. 2007). The undersigned sees no reason to discount claimant's treating source opinions. Therefore, claimant's exertional impairments render claimant able to perform work at the sedentary level.

According to Rule 201.06, when considering a claimant of advanced age with a maximum sustained work capability limited to sedentary work, more than a high school education that does not provide direct entry into skilled work, and with previous experience in skilled or semi-skilled work, a finding of disability is directed. The only exception in such a case would be if the claimant's skills were readily transferable to a significant range of skilled work within an individual's residual functional capacity, but in order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry. The undersigned finds that the adjustment required by claimant would be too significant to warrant a finding that her skills are transferable.

The Department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for the purposes of the MA program.

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, and alleges an onset date of 2007, 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 disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P and SDA application and award all benefits that claimant is entitled to receive under the appropriate regulations. The Department is further ORDERED to initiate a review of claimant's disability case in July, 2011.



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Robert Chavez  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 07/02/10

Date Mailed: 07/08/10

**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.

RJC/dj

cc:

