

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: 200913865  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 3, 2009  
Huron 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 June 3, 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 November 17, 2008.
- (2) Claimant is 27 years old.
- (3) Claimant has a bachelor's degree in social work.
- (4) Claimant is not currently working.
- (5) Claimant has been diagnosed with fibromyalgia with extreme migraines.

- (6) Claimant was diagnosed with fibromyalgia by a licensed rheumatologist in a medically acceptable process.
- (7) Medical reports from fibromyalgia specialists document claimant has frequent symptoms of severe fatigue, combined with frequent feelings of illness and bodily discomfort.
- (8) Claimant has marked difficulties in completing her activities of daily living, requiring assistance to perform many basic functions.
- (9) Claimant has marked difficulties in completing tasks in a timely manner due to deficiencies in concentration, persistence, and pace from her impairment.
- (10) On January 6, 2009, the Medical Review Team denied MA-P and SDA stating that claimant was capable of performing other work and was subsequently denied on January 9<sup>th</sup>, 2009 for the MA-P program.
- (11) On January 19, 2009, claimant filed for hearing.
- (12) On March 3, 2009, the State Hearing Review Team denied MA-P and SDA stating that claimant had a non-severe impairment.
- (13) On June 3, 2009, a hearing was held before the Administrative Law Judge.
- (14) The record was held open for the claimant to submit additional records.
- (15) SHRT issued a second decision stating that there was no objective evidence of a significant disabling impairment that would preclude basic work activity.
- (16) Claimant was represented by [REDACTED]  
[REDACTED]

#### 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 more than sufficient evidence of fibromyalgia that has more than a minimal effect on the claimant’s ability to do basic work activities. Claimant’s treating source and hospital records state that claimant has restrictions in her functional capacities to do physical activities, including lifting, walking, and standing, and maintaining concentration, persistence, and pace.

Furthermore, while SHRT stated, in their decision, that there was no objective medical evidence of an impairment, in the light of the unique evidentiary difficulties associated with the diagnosis and treatment of fibromyalgia, opinions that focus solely upon objective evidence are not particularly relevant. *Rogers v. Commissioner*, 486 F, 3d. 234 (6<sup>th</sup> Cir. 2007). Claimant has presented more than adequate evidence that her condition was diagnosed by an extremely respected medical professional who is trained to diagnose conditions such as claimant’s; that the condition was diagnosed in a manner consistent with the medical literature on the subject; and that the condition has been agreed upon by 3 different treating sources. Thus, the undersigned is of the opinion that there is sufficient evidence in the case file to hold that claimant suffers from an extremely debilitating condition that has more than a minimal effect on her ability to perform basic work functions.

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.

In the current case, claimant's medical condition is not a listed impairment. Our analysis must not stop there, however. A condition may also equal a current listing to find a claimant disabled at step 3.

For an impairment to be found to be equivalent in severity to a listed impairment, the set of symptoms, signs and laboratory findings in the evidence supporting a claim must be compared with and found to be equivalent in terms of medical severity and duration to the set of symptoms, signs and laboratory findings specified for a listed impairment. When the individual's impairment is not listed, the set for the most closely analogous listed impairment is used. If the findings related to the impairment are at least of equal medical significance to those of a listed impairment, the impairment is medically equivalent to the analogous listing. 20 CFR 404.1526.

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 analyzing the medical listings, the undersigned has determined that a connected tissue disease is the listing most analogous to fibromyalgia.

Appendix 1 of Subpart P of 20 CFR 404, Section 14.00 has this to say about immune disorders:

***14.06 Undifferentiated and mixed connective tissue disease. As described in 14.00D5. With:***

**B.** Repeated manifestations of undifferentiated or mixed connective disease, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

Claimant's fibromyalgia is most analogous to this listing. Fibromyalgia is characterized by extreme fatigue with undifferentiated pain throughout the body that causes a general malaise in a claimant's health. While the exact vectors and processes of the disease are still being studied, the disease is recognized by the Social Security Administration. *See Rogers, SSR 99-2p.*

The great weight of the evidence shows that claimant is affected by severe fatigue, which has been documented by claimant's treating source, a medical center specializing in fibromyalgia cases. Claimant's primary physician has also documented claimant's fatigue. Claimant credibly testified that she has five bad days per week; on these bad days, she is unable to move from her bed. Claimant's fatigue has been documented by her treating source as severe and occurring at least 2-3 days per week.

Furthermore, the evidence shows that claimant's fibromyalgia is responsible for general malaise. Claimant has frequent severe muscle pain, and severe migraine headaches at least 2-3 times per week. These headaches resulted in numerous emergency room visits. Claimant has had gastrointestinal disturbances which resulted in gallbladder complications. Treatment has been only partially effective in controlling claimant's symptoms.

Claimant has had marked limitations in performing activities of daily living. Claimant can only perform basic functions 2 days per week, on average. Claimant needs assistance from her parents to leave the house. Claimant is unable to cook food except for simple microwave processed food. Claimant does not have the energy requirements necessary to do most chores. Claimant lives with her parents who help her with most tasks. Claimant is unable to drive because of a tendency to fall asleep. Claimant's treating source testified through a letter that

claimant's treatment has not helped "to the extent that she can be a more functional member of society".

Claimant, therefore, has two of the required constitutional symptoms of listing 14.06, and has marked difficulties in maintaining her activities of daily living. Claimant, therefore, medically equals the listings found in 14.00.

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.

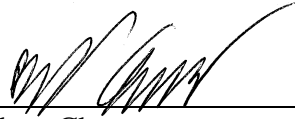
With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As claimant 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 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 required benefits, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in May, 2011.



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

Date Signed: 05/06/10

Date Mailed: 05/13/10

**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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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:

