

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-47546
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 4, 2010
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 hearing was held in Clinton Township, Michigan on Thursday, November 04, 2010. The Claimant appeared, along with [REDACTED] and [REDACTED], and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Claimant.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on May 8, 2009.
2. On February 2, 2010, the Medical Review Team ("MRT") determined that the Claimant was not disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 1, pp. 96, 97)
3. On February 8, 2010, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled. (Exhibit 3)
4. The Claimant appealed the MRT determination. (Exhibit 4)

5. On August 27, 2010, the State Hearing Review Team ("SHRT") determined that the Claimant was not disabled. (Exhibit 6)
6. The Claimant's alleged physical disabling impairment(s) are due to thyroid disorder, seizure disorder, and Grave's disease.
7. The Claimant's alleged mental disabling impairment(s) due to anxiety and depression.
8. At the time of hearing, the Claimant was 29 years old with an [REDACTED] birth date; was 5'5" in height; and weighed 158 pounds.
9. The Claimant is a high school graduate with an employment history in marketing, sales, as a waitress, and as a daycare provider.
10. The Claimant's impairment(s) have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formerly known as the Family Independence Agency, 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").

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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to

substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due to thyroid disorder, seizure disorder, and Grave's disease.

On [REDACTED], the Claimant presented to the hospital via EMS after acute change in mental status to include hallucinations. The thyroid ultrasound was performed which revealed an enlarged heterogeneous lobes of the thyroid gland without discrete nodule and mild hyperemia. The CT scan of the brain without intravenous contrast enhancement was unremarkable. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of acute thyrotoxicosis secondary to Graves' disease, history of psoriasis, and generalized anxiety disorder.

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On [REDACTED] 009, the Claimant presented to the hospital via EMS after being found comatose in her home. The Claimant remained in ICU on a ventilator. The Claimant was discharged on [REDACTED] with the diagnoses of acute metabolic encephalopathy with seizure secondary to the thyrotoxicosis.

On [REDACTED], the Claimant presented to the hospital with acute ventilatory failure status secondary to epilepticus. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of status post acute ventilatory failure secondary to status epilepticus. The secondary diagnoses were thyrotoxicosis, hyperammonemia, norocytic normochromic anemia, history of seizure disorder, possible urea cycle mutation, and possible porphyria.

On [REDACTED], the Claimant was diagnosed with generalized anxiety disorder with a GAF of 50.

On [REDACTED], the Claimant presented to the hospital with severe status epilepticus. The Claimant was on a ventilator for approximately 5 days. On [REDACTED] [REDACTED] the Claimant underwent a total thyroidectomy without complication. The Claimant was discharged on [REDACTED], with the diagnoses of status post acute ventilatory failure secondary to status epilepticus from thyrotoxicosis. The Claimant also had a history of severe Grave's disease and seizure disorder.

On [REDACTED], the Claimant attended a follow-up neurological appointment. The Claimant was diagnosed with seizure disorder.

On [REDACTED], the Claimant Endocrinologist completed a Medical Examination Report on behalf of the Claimant. The current diagnosis was hyperthyroidism. The Claimant was found able to occasionally lift/carry 20 pounds with frequent lifting/carrying of less than 10 pounds and was able to perform repetitive actions with her extremities. The Claimant was found, at this point, unable to engage in employment.

On [REDACTED], the Claimant attended a consultative evaluation. The Claimant was diagnosed with hyperthyroidism and status epilepticus. Referrals to her neurologist and endocrinologist were given.

On [REDACTED], the Claimant's Neurologist completed a Medical Examination Report on behalf of the Claimant. The current diagnosis was generalized seizure. The Claimant was found able to occasionally lift/carry 10 pounds with frequent lifting/carrying of less than 10 pounds; was able to sit about 6 hours during an 8 hour workday; was able to perform simple grasping and fine manipulation with both upper extremities; and able to operate foot/leg controls. The Claimant was unable drive or operate heavy machinery. Mental limitations were in memory and sustained concentration.

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On [REDACTED] the Claimant attended a neurologic follow-up appointment. The Claimant continued to have auras despite medication. The Claimant was diagnosed with seizure disorder.

On [REDACTED], the Claimant attended a follow-up appointment with her neurologist. The Claimant had developed severe paranoia as a result of her medication. The Neurologist, with some reluctance, changed her medication noting the concern about increased seizure activity.

On [REDACTED], the Claimant underwent a mental status examination. The Claimant was diagnosed with mood disorder with a Global Assessment Functioning ("GAF") of 49. The Claimant's prognosis was fair to guarded.

On [REDACTED], a Physical Residual Functional Capacity Assessment was completed on behalf of the Claimant by the Social Security Administration. The Claimant was found to not have any significant physical and/or mental limitations.

On [REDACTED], the Claimant attended a follow-up appointment with her treating Neurologist. The Claimant's medications were adjusted noting the decrease in auras although still existent.

On [REDACTED], the Claimant's treating Neurologist authored a letter confirming treatment for uncontrolled seizures. The Neurologist opined that due to the medication adjustments and excessive daytime hypersomnolence related to her nocturnal seizures, the Claimant was unable to work.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months, therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical disabling impairments due to thyroid disorder, seizure disorder, and Grave's disease.

Listing 11.00 defines neurological impairments. In epilepsy, regardless of etiology, the type, frequency, duration, and sequelae of seizures is considered. 11.00A At least one detailed description of a typical seizure is required and should include the presence or

absence of aura, tongue bites, sphincter control, injuries associated with the attack, and postictal phenomena. *Id.* The seizure activity must persist despite adherence to prescribed treatment. *Id.* Listing 11.02 defines the requirements of convulsive epilepsy. To meet this listing, documentation providing a detailed description of a typical seizure pattern, including all associated phenomena, occurring more frequently than once a month, in spite of at least three months of prescribed treatment with daytime episodes (loss of consciousness and convulsive seizures) or nocturnal episodes manifesting residuals which interfere significantly with activities during the day. To meet Listing 11.03, an individual's nonconvulsive epilepsy must be documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly despite at least 3 months of prescribed treatment with alteration of awareness or loss of consciousness. Additionally, documentation of transient postictal manifestations of unconventional behavior or significant interference with activity during the day is required.

In this case, the objective medical evidence documents, in part, a thyroid storm, thyrotoxicosis, seizure disorder, and severe Grave's disease. The Claimant's condition resulted in several hospitalizations in March (2x), April, and August. Each stay, the Claimant was in the intensive care unit on a ventilator. Despite adherence to prescribed treatment, the Claimant still experiences auras on an almost daily basis. Eye witness testimony described the auras stating that the Claimant's expression is blank, she stares, and doesn't move. The auras last approximately 10 minutes. Afterwards the Claimant sleeps for a couple hours, shakes, and usually blacks out what happened earlier in the day. The Claimant cannot be left alone and is unable to drive. The Claimant's treating Neurologist notes how complicated the Claimant's case, noting her auras and nocturnal seizures. The Neurologist opined that the Claimant is unable to engage in employment. Similarly, the Claimant's treating Endocrinologist found the Claimant unable to work. Ultimately, it is found, that the Claimant's impairments meet, or is the medical equivalent thereof, a listed impairment within 11.00, specifically 11.03, as detailed above. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program therefore the Claimant is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the Medical Assistance and State Disability Assistance programs.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the May 8, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her representative of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in December 2011 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/10/2010

Date Mailed: 11/10/2010

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.

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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.

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