

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-34297

Issue No: 2009; 4031

[REDACTED]

Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 received on April 5, 2011. After due notice, a telephone hearing was held on August 4, 2011. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On January 21, 2011, Claimant applied for MA-P and SDA benefits.
- (2) On April 19, 2011, the Medical Review Team (MRT) denied Claimant's application for SDA stating that Claimant's physical impairment will not prevent employment for 90 days or more pursuant to BEM 261. MRT denied Claimant's MA application stating Claimant is capable of performing past relevant work as a janitor, in food service, or at the courtesy desk pursuant to 20 CFR 416.920(E).
- (3) On April 20, 2011, the department caseworker mailed Claimant notice that her application was denied.

- (4) On May 2, 2011, Claimant filed a request for a hearing to contest the department's negative action. (Request for a Hearing).
- (5) On June 13, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits stating Claimant retains the residual functional capacity to perform light work per 20 CFR 416.920(e). (Department Exhibit B, pages 1-2).
- (6) Claimant has a history of fibromyalgia, morbid obesity, gastroesophageal reflux disease (GERD), hyperlipidemia, Epstein bar syndrome, carpal tunnel disease, rheumatoid arthritis, memory loss, polycystic ovarian disease, diabetes and neuropathy.
- (7) On October 26, 2010, Claimant visited her doctor to discuss fibromyalgia and applying for disability. According to Claimant, her fibromyalgia is getting worse causing her to cry at times because of the pain. Claimant complained of back pain. Her musculoskeletal exam was normal. The doctor found that Claimant can undergo exercise testing and/or participate in an exercise program. The doctor concluded that he did not believe Claimant was disabled from the fibromyalgia, and encouraged her to be more active. (Department Exhibit A, pages 3-5).
- (8) On November 22, 2010, Claimant saw her doctor for her annual exam and fibromyalgia medication. Claimant was alert, cooperative and in no distress. Her neck had tender points bilaterally. (Department Exhibit A, pages 32-34).
- (9) On February 15, 2011, Claimant visited her doctor for fibromyalgia medication. Claimant was alert, cooperative and in no distress. Depression improved with Prozac. Claimant had paracervical and paraspinal tenderness in thoracic and slightly in paralumbar area. (Department Exhibit A, pages 30-32).
- (10) On February 28, 2011, Claimant was tested for hypothyroidism. The Rheumatoid Factor Quantitation was positive for the rheumatoid factor. (Department Exhibit A, pages 34-36).
- (11) On March 1, 2011, Claimant completed the Medical-Social Questionnaire indicating she has severe stage fibromyalgia, 18 pressure points, with chronic severe pain from shoulders to feet both sides, front and back. (Department Exhibit A, pages 8-10).
- (12) On March 2, 2011, Claimant completed the Activities of Daily Living form indicating that she does not fix her own meals because her leg pain does not allow her to stand very long. Claimant stated that she and her husband prepare meals together and she can fix quick and easy recipes.

Claimant indicated that her husband helps her with the laundry, dishes and cooking. Claimant stated that she and her husband take turns driving to the grocery store because of their pain issues. (Department Exhibit A, pages 11-15).

- (13) On March 15, 2011, Claimant was seen by her doctor for a Vicodin refill. During her musculoskeletal physical, the doctor noted tenderness on the cervical and thoracic spine as well as multiple points in Claimant's back. The doctor indicated that Claimant's urine drug screen was negative for opiates, which was unusual. A serum quantitative level was planned in 2 months to determine if Claimant was taking the prescribed Vicodin. (Department Exhibit A, pages 28-29).
- (14) On July 13, 2011, the EMG evaluation of both of Claimant's upper limbs and corresponding paraspinal muscles revealed normal EMG findings. No membrane instability and motor unit action potentials. Recruitment patterns were within normal limits. The nerve conduction study showed bilateral carpal tunnel syndrome, mild, no denervation on either side superimposed with median neuropathy on both sides. Bilateral ulnar neuropathy presenting as cubital tunnel syndrome, mild in both, no denervation. No brachioplexopathy or cervical radiculopathy. Superimposing multifocal neuropathy but no denervation. The neuronal changes are due to carpal tunnel and cubital tunnel syndrome and neuropathy which all severities are mild with no membrane instability. All of these are neuromuscular junctional changes to explain partly her pain and some are musculoskeletal issues. (Department Exhibit A, pages 47-49).
- (15) On July 19, 2011, Claimant was seen by a doctor for numbness, tingling, prickling, burning, aching pain that goes up through the hand, wrist and forearm all the way up into the arm, shoulders and neck. Claimant has weakly positive Tinel's over both ulnar nerves at the elbow and both ulnar nerves at the wrists. There is no perceptible loss of intrinsic function detectable. Claimant is a Type II diabetic and has been pre-diabetic for some time and on Metformin for the past 3 to 4 years. She has a right grip of 20 pounds, left 35. Right pinch is 8 and left 6. She has a very positive Tinel's and Phalen's of both hands and minimal atrophy noted. Claimant has had carpal tunnel surgery on both hands and severe fibromyalgia that causes a lot of pain. She is suffering from a complex pain syndrome due partly to arthritis, partly to fibromyalgia and partly to carpal tunnels. At this point, according to the EMG, her carpal tunnel is pretty mild and the doctor prescribed splints for the carpal tunnels. (Department Exhibit A, pages 45-46).

- (16) Claimant is a 45 year old woman whose birthday is November 29, 1965. Claimant is 5'3" tall and weighs 218 lbs. Claimant is a high school graduate.
- (17) Claimant worked as a courtesy clerk from November 1988 until November 2001, and as a janitor from 1998 to 2001 as well as in food service from March 2005 through September, 2008.
- (18) Claimant has applied for Social Security disability and her application was pending at the time of the hearing.

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 Reference Tables Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR

404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability

must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that she has not worked since 2008. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with fibromyalgia, carpal tunnel disease, rheumatoid arthritis and diabetes. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Claimant established that at all times relevant to this matter Claimant had carpal tunnel disease and fibromyalgia which would affect her ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

At Step 3 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. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant's past relevant employment was working as a courtesy clerk for 13 years, as a janitor for three years and part time in food service for three years. At Step 4, the objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent her from performing the duties required from her past relevant employment for 12 months or more. Accordingly, Claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the burden of proof shifts to the department to establish that Claimant has the residual functional capacity to do substantial gainful activity. The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. See discussion at Step 2 above. Findings of Fact 14-17.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light work duties. Claimant alleges she suffers from severe fibromyalgia, carpal tunnel syndrome and neuropathy.

Claimant's doctor performed a musculoskeletal exam on October 26, 2010 which was normal, and as a result her doctor opined that she was not disabled based on fibromyalgia and she could undergo exercise testing and/or participate in an exercise program. An Electromyography examination on July 13, 2011 of Claimant's upper limbs and corresponding paraspinal muscles revealed normal findings. The nerve conduction study showed Claimant had mild bilateral carpal tunnel syndrome. Claimant also had mild bilateral ulnar neuropathy presenting as cubital tunnel syndrome with no denervation. Claimant also has weakly positive Tinel's over both ulnar nerves at the elbow and both ulnar nerves at the wrists with no perceptible loss of intrinsic function detectable. She also has very positive Tinel's and Phalen's of both hands with minimal atrophy noted.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows she can perform light work. Under the Medical-Vocational guidelines, an individual age 45 - 49 (Claimant is 45 years of age), with a high school education and an unskilled or limited history who can perform only light work is not considered disabled pursuant to Medical-Vocational Rule 202.13.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

/s/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 8/17/11

Date Mailed: 8/17/11

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.

VLA/ds

