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



Reg. No.: 2011-36710 Issue No.: 2009, 4031 Case No.: Hearing Date: August 24, 2011 Macomb County DHS (36)

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 telephone hearing was conducted from Detroit, Michigan on Wednesday, August 24, 2011. The Claimant appeared and te stified.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of addi tional medical evidence. The new evide nce was received, reviewed and for warded to the State Hearing Review Team ("SHRT") for consideration. On November 15, 2011, t he SHRT found the Claimant not disabled. This matter is now before the undersigned for a final decision.

<u>ISSUE</u>

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

FINDINGS OF FACT

The Administrative Law Judge, based upon t he 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 March 14, 2011.

- 2. On April 25, 2011, the Medical Review Team ("MRT") determined the Claimant was not disabled for purposes of the MA -P and SDA benefit programs. (Exhibit 1, pp. 4, 5)
- 3. The Department sent an Eligibility Noti ce to the Claimant informing her of the MRT determination on April 28, 2011.
- 4. On May 24, 2011, the Department received the Claimant's timely written Request for Hearing. (Exhibit 1, p. 1)
- 5. On July 1, 2011, the SHRT determined that the Claimant was not dis abled. (Exhibit 3)
- 6. The Claimant's alleged physical disabling impairment(s) are due to back and shoulder pain, shortness of breath, as thma, chest pain, high blood press ure, congestive heart failure, acid reflux, ab dominal pain, incontinence, diabetes, headaches, and dizziness.
- 7. The Claim ant alleged mental di sabling impairments due to anxiety and depression.
- 8. At the time of hearing, the Claim ant was years old with an birth date; was 5'8" in height; and weighed 198 pounds.
- 9. The Claim ant has the equiv alent of a high school education with some c ollege and an employment history as a care provider.
- 10. The Claimant's impairment(s) have last ed, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance 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, formerly known as the Family Independenc e Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge s Administrative Manual ("BAM"), the Bridges Elig ibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment which can be expected to result in death or which has lasted or can be expect ed to last for a continuous period of not

less than 12 months. 20 CFR 416.905(a). The person claimi ng a physical or mental disability has the burden to esta blish it through the use of competent medical evidenc e from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disab ility is alleged. 20 CRF 413 .913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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, t he 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 applica nt 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 determi ne the ext ent of his or her functi onal 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 fivestep analysis requires the trier of fact to cons ider an individual's current work activit y; 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 det ermine whether an individual c an perform past relev ant work; and residual functiona I capacity along with vocational factors (i .e. age, education, and work experienc e) 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 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 indi vidual'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 f unctional capacity is the most an indiv idual can do d espite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residua l functional capacity assessment is evaluat ed at both steps four and five. 20 CF R 416.920(a)(4). In determining disability, an i ndividual's functional capacity to perform basic work activities is evaluated and if found that the individ ual h as 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 i ndividual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impair ment or combination of impairments is n ot severe if it does not signific antly limit an i ndividual's physical or m ental ability to do basic work activities. 20 CFR 416.921(a). The in dividual has the responsibility t o 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).

In addition to the above, when evaluating m ental impairments, a special technique is utilized. 2 0 CF R 41 6.920a(a). First, an i ndividual's pertinent sym ptoms, signs, a nd laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is h the impairment(s) interferes with an assessed based upon the extent to whic individual's ability to func tion independently, appropriately , effectively, and on а sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic m ental disorders, structured the effect on the overall degree of settings, medication, and other treatment and functionality is considered. 20 CFR 416.920a(c)(1). In addi tion, four broad functional areas (activities of daily living; social f unctioning; concentration, persistence or pace; and episodes of decompensat ion) are consider ed when deter mining an indiv idual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of lim itation in the fourth functional area. Id. The last point on each scale repr esents a degree of limitation t hat is incompatible with the ability to do any gainful activity. Id.

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a lis ted mental disorder is made. 20 CF R 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual function on al capacity is assessed. 20 CF R 416.920a(d)(3).

As outlined above, the first step looks at the i ndividual'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 impa irment(s) is considered under St ep 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disa bling impairments. In order to be considered disabled for

MA purpos es, the impairment must be se vere. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it signific antly limits an in dividual'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 wa lking, 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.
- ld.

The second step allows for dismissal of a di sability claim obviously lacking in medical merit. *Higgs v Bowe n,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen o ut 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 qu alifies 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 Claim ant alleges disability due to bac k and shoulder pain, shortness of breath, asthma, chest pain, high blood pressure, congestive heart failure, acid reflux, abdominal pain, incontinence, diabetes, headaches, dizziness, anxiety, and depression. In support of her claim, some older records from as early as submitted which doc ument treatment/diagnoses for asthma exacerbation, uncontrolled diabetes, hypertension, OT prolongation,

On , a MRI revealed minimal bulging at C5-6 and C6-7.

On **ACCENTION** a MRI of the lumbar spine rev ealed mild circumferential disc bulge at T12-L1 with facet arthrosis; mild circumferential disc bulge indenting the ventral thecal sac with mild facet arthrosis and ligamentum flavum hypertrophy; disc desiccation and broad-based c entral disc prot rusion indenting the ventral thecal wit h facet arthrosis and ligamentum flavum hypertrophy and mild spinal stenosis at L3-4; and disc desiccation and marginal spurring with minimal endplate signal change at L4-5 with broad-based central disc extrusion inferior to the superior L5 endplate and moderate stenosis. Circumferential disc bulging is a symmetric to the right and encroached up on the inferior aspect of the right neural foram en at L4-5. And finally, at L5-S1, a large central ostephyte encroaching upon the spinal canal and lateral recesses with possible bony bridging across the disc space.

On a MRI of the thoracic spine revealed mild multi-level thoracic spondylosis, facet arthrosis, multilev el disc bulges, and mild left neur al foraminal narrowing at the T8-9 and T9-10 levels.

On **a basis** a hysterosonogram was performed showing multiple polypoid lesions and septated appearing cystic lesion in the right ovary.

On a MRI of the lumbar spine revealed new moderately larg e superimposed disc extrusion aris ing from L4-5 level extending inferiorly into the left paracentral/foraminal region caus ing effacement of the left lateral recess, mass effect, and encroachment on the left-sided nerve roots, and severe narrowing of the left L5-S1 neural foramen and mild spinal stenosis at L-3-4 and moderate stenosis at L4-5.

On a MRI of the thoracic sp ine revealed mild multi-lev el thoracic spondylosis and facet arthrosis, minimal-to-m ild multilevel disc bulges, and mild left neural foraminal narrowing at T8-9 and T9-10.

On **a MRI** of the left shoulder revealed moderate osteoarthritis, focal insertional articular surface t ear, severe AC joint arthropathy, and contour irregularity of the superior labrum, tear suspected.

On the Claimant's psychiatric medications were renewed.

As previously noted, the Claim ant bears t he burden to present sufficient objective medical evidence to s ubstantiate the alleged disabling im pairment(s). As summarized above, the Claimant has presen ted medical evidence establis hing that she does hav e 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 minimus* effect on the Claimant's basic work activities.

Further, the impairments have la sted continuous ly for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis 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 physic al disabling impairments due to back and shoulde r pain, shortness of breath, asthma, chest pain, high blood pressure, congestive heart failure, acid r eflux, abdominal pain, incontinence, diabetes, headaches, dizziness, depression, and anxiety.

Listing 1.00 defines musculoskeletal syst em impairments. Disor ders of the musculoskeletal system may re sult from her editary, congenital, or acquired pathologic processes. 1.00A. Impairments may resu It from infectious , inflammatory , or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic dis eases. 1.00A. Regardle ss of the cause(s) of a musculoskeleta impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sus tained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ab ility to walk ; i.e., an impairment(s) that interferes very seriously with the indi vidual's ability to independently initiate, su stain, or complete activities. 1.00B2b(1). Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independ ent ambulation without the use of a handheld assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because t he individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable wallking pace over a sufficien t distance to be able to carry out activities of daily living. 1.00B2b(2). They must have the ability to travel without companion assistance to and from a place of employment or *Id.* When an individual's im pairment in volves a lower extremity uses a school... hand-held assistive device, such as a cane, crutch or walker, the medical b asis for use of the device should be docum ented. 1.00J4. The r equirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. Id.

Categories of Musculoskeletal include:

1.02Major dysfunction of a joint(s) due to any
Characterized by gross anat
subluxation, contracture, bony or fibrous ankylosis, instability)cause:
cause:
omical deformity (e.g.

and chronic joint pain and stiffne ss with s igns of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriat e medically acceptable imaging of joint space nar rowing, bony destruction, or ankylosis of the affected joint(s). With:

- Α. Involvement of one major peri pheral weight-bearing joint (i.e., hip, knee, or ank le), resulting in inab ility to ambulate effectively as defined in 1.00B2b; or
- Β. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wr ist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c
- * * *
- Disorders of the spine (e.g., herniated nucleus pulposus, 1.04 spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a ner ve root (including the cauda equine) or spinal cord. With:
 - Evidence of nerve root compression charact erized by Α. 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 ba ck, positive straight-leg raising test (sitting and supine); or
 - arachnoiditis, confirmed by an oper ative note B. Spinal or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dys esthesia, resulting in the need for changes in position or post ure more than onc e every 2 hours; or
 - C. Lumbar spinal stenosis res ulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradic ular pain and weak ness. and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

In this case, the objective evidence reveal s that the Claimant su ffers with multi-level disc bulges, degenerative disc disease, s

pondylosis, facet arthrosis, moderate

osteoarthritis of the left shoulder, severe AC joint arthropathy wit h suspected tear, and moderately large superimposed disc ext rusion aris ing from L4-5 level extending inferiorly into the left paracent ral/foraminal region caus ing effacement of the left later al recess, mass effect, and encr oachment of the left-sided nerv e roots, and severe narrowing of the left L5-S1 neural foramen. In light of the foregoing, it is found that the Claimant's impairments meet, or are the medical equivalent thereof, a listed impairment within 1.00, specifically 1.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assist ance program, which pr ovides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program purusant to MCL 400.10 *et seq.* and Mich Admin Code Ru les 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA pur poses if the person ha s a physical or mental imparim ent which meets federal SSI dis ability standards for at I east 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 ind ividual as d isabled for p urposes of the SDA program.

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

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, finds the Claimant disabled for pu rposes of t he Medical Assistance and State Disability Assistance programs.

- It is ORDERED:
 - 1. The Department's determination is REVERSED.
 - 2. The Department shall initiate processing of the March 14, 2011 application to determine if all other non-medica I criteria are met and inform the Claimant of the determination in accordance with Department policy.
 - 3. The Department shall supplement for lost benefit s (if any) that the Claimant was entitle d to receive if otherwise eligible and qualified in accordance with Department policy.

4. The Department shall review the Claimant's continued eligibility in December 2012 in accordance with Department policy.

Colleen M. Mamilka

Colleen M. Mamelka Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: November 28, 2011

Date Mailed: November 28, 2011

NOTICE: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at Michigan Administrative hearings

Re consideration/Rehearing Request P. O. Box 30639 Lansing, Michigan 48909-07322

CMM/cl

cc: