

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

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg. No.: 201110422; 201116061
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: March 30, 2011
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in person hearing was held on March 30, 2011. The Claimant appeared and testified. Claimant's Authorized Hearings Representative, [REDACTED] also appeared. [REDACTED], Medical Contact Worker appeared on behalf of the Department.

ISSUE

Was the Department correct in denying Claimant's MA and SDA applications?

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 on [REDACTED]. Claimant applied for SDA on [REDACTED]. These applications were consolidated and will be addressed in this decision.
2. The Medical Review Team denied the applications on [REDACTED].
3. Claimant filed a request for hearing on [REDACTED] and again on [REDACTED] protesting the MA denial.
4. A hearing was held on [REDACTED].

5. On [REDACTED] the State Hearing Review Team denied the application because Claimant retains the capacity to perform light exertional work.
6. Claimant is 5'7" tall and weighs 220 pounds.
7. Claimant is 29 years of age.
8. Claimant's impairments have been medically diagnosed as back and neck injury, anemia, bronchitis and depression.
9. Claimant's physical symptoms are back and neck spasms, fatigue, pain, headaches, and crying spells.
10. Claimant takes the following prescriptions:
 - a. [REDACTED]
 - b. [REDACTED]
 - c. [REDACTED]
 - d. [REDACTED]
 - e. [REDACTED]
11. Claimant completed the 12th grade and 2 years of college.
12. Claimant is able to read, write, and perform basic math skills.
13. Claimant last worked as a door to door salesperson. The job duties included lifting up to 25lbs., standing, bending/stooping, grasping.
14. Claimant worked in the past as a waitress and at a factory.
15. Claimant testified to the following physical limitations:
 - i. Sitting: 30 minutes
 - ii. Standing: 15 minutes
 - iii. Walking: 1 and 1/2 blocks
 - iv. Bend/stoop: bending is difficult b/c of back pain
 - v. Lifting: 10 lbs.
 - vi. Grip/grasp: no difficulty
16. Claimant lives with her grandmother.
17. Claimant testified that she does perform some light household chores.
18. Claimant injured her neck and spine from a fall in [REDACTED] and was admitted to [REDACTED].

19. Claimant sustained a C6 fracture and underwent surgery for a C6-C7-T1 fusion.
20. Claimant had a mental status examination in [REDACTED] and received a GAF score of 52 from the psychologist. Claimant was diagnosed with depression and antisocial personality disorder.
21. The psychologist [REDACTED] stated in the mental status examination "Claimant demonstrated a number of cognitive strengths, with intact capacity to concentrate, as evidenced by skills in performing calculations and also in terms of immediate memory and the ability to pay attention but only slight difficulties with short-term memory. She displayed moderate strengths in abstract thinking but variability in terms of judgment and impulse control. She would appear capable of managing work type activities of a moderate to relatively high degree of complexity, remembering and executing a multiple step procedure on a sustained basis with intact capacity for job related judgment and problem solving."
22. In a letter dated [REDACTED] [REDACTED]s, Claimant's treating surgeon, states that Claimant "is at this point someone, who is not able to return to work at this time and will not for the foreseeable future. It is my expectation that her pain will decrease over time, but at this point, it is interfering with her activities of daily living and would preclude her being able to go back to work. [REDACTED] is unable to work and would be considered disable secondary to her injury and surgical recovery." (Exhibit A4).
23. The Claimant's limitations are expected to last for 12 months or more.

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 (formerly known as the Family Independence Agency) 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 Program Reference Manual (PRM). Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

- . . . 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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 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 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 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 she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, the Claimant was not currently working at the time of the hearing. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a "severe impairment" 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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. 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. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the Claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a Claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence from medical providers showing diagnoses of back and neck pain resulting from an injury, and depression. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting.

The medical evidence has established that Claimant has physical limitations that could have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously, or will last for more than twelve months. Because this is a de minimus test, it is necessary to continue to evaluate the Claimant’s impairments under step three.

3. Listed Impairment

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. 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.

None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the severity of the above listings. The medical evidence shows neck and back pain and depression.

4. Past Relevant Work

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.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a door to door salesperson. Door to door selling, waitressing is considered light work. The Claimant's impairments would prevent her from doing past relevant work. Claimant has presented the required medical data and evidence necessary to support a finding that Claimant is not, at this point, capable of performing such work.

In the fifth step of the sequential consideration of a disability claim, the trier of fact 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). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this case, Claimant testified during her hearing that she retains the capacity to stand for 15 minutes, sit for 30 minutes, lift 10 pounds, and walk approximately 1 and a ½ blocks. This Administrative Law Judge finds Claimant's testimony with regard to the severity of her limitations credible. Claimant's medical records support the severity of the limitations testified to by the Claimant. Specifically the opinion provided by Claimant's treating surgeon, [REDACTED], in her letter dated [REDACTED]. This Administrative Law Judge is required to give opinions of Claimant's treating physician weight unless it is not supported by substantial evidence.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for the purposes of the MA and SDA programs.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). [See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986)]. 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 purposes of the MA program.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P), automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as claimant has been found

“disabled” for purposes of MA, Claimant must also be found “disabled” for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant meets the definition of medically disabled under the Medical Assistance and State Disability programs as of [REDACTED].

Accordingly, the Department is ordered to initiate a review of the [REDACTED], and [REDACTED] applications, if it has not already done so, to determine if all other non medical eligibility criteria are met. The Department shall inform Claimant **and** [REDACTED], of its determination in writing. Assuming that Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in [REDACTED].



Aaron McClintic
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 19, 2011

Date Mailed: May 19, 2011

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.

AM/hw

cc: [REDACTED]