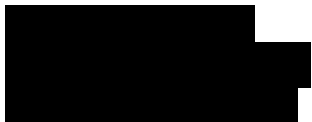


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201120854
Issue No: 4031
Case No: [REDACTED]
Hearing Date: May 25, 2011
Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 held on May 25, 2011. The claimant appeared and testified.

ISSUE

Was disability medically established?

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 is currently unemployed.
- (2) In April 2009, the claimant was laid off from her last job.
- (3) Claimant's vocational factors are: age 46, 11th grade education, and past work experience as a unskilled/semi-skilled waitress, short order cook, bartender, water and sewer pipe layer, and grounds keeper (Medical Packet, pages 234 and 298).
- (4) On December 13, 2010, the claimant applied for SDA, was denied on January 26, 2011, per BEM 261, and requested a hearing on February 14, 2011.

- (5) Claimant alleges disability due to fibromyalgia and bone spurs in the neck (Medical Packet, page 298).
- (6) Medical exam on [REDACTED], regarding neck pain, states the claimant went to the ER on [REDACTED]; that a CT of the brain was normal; that a previous EMG of bilateral upper extremities obtained in [REDACTED] revealed a normal needle exam and conduction (Medical Packet, pages 141 and 142).
- (7) Medical exam on [REDACTED], states the claimant is in no acute distress; that her neck is thyromegaly, carotid bruts or lymphadenopathy; that motor testing revealed symmetrical bulk, normal tone and full strength in all tested muscles; that station and gait are normal; and that tandem gait is normal (Medical Packet; page 132).
- (8) Medical exam on [REDACTED], states the cervical lordosis is normal; that there is no palpable tender trigger points in the bilateral paraserial musculature and bilateral paralumbar musculature; that hip (bilateral) has a full range of motion in all joints; that extremities strength in all muscle groups are normal (Medical Packet, pages 288 and 290).
- (9) Medical exam on [REDACTED], states the claimant's lumbar x-ray showed posterior radial tear of the annulus fibrosis of the L5-S1 level (Medical Packet, page 277).
- (10) Medical exam on [REDACTED], states the claimant's MRI of the cervical spin showed degenerative plate changes and disk extrusion at the L5 – C6 level (Medical Packet, page 279).
- (11) Medical exam on [REDACTED], states the claimant walks with a normal gait; that the neck is supple with no masses or thyromegaly; that there is no joint instability, enlargement, or effusion; that grip strength remains intact; that dexterity is unimpaired; that she could pick up a coin, button clothing, and open a door; that she had no difficulty getting on and off the examination table, mild difficulty heel and toe walking and mild difficulty squatting; that range of motion was normal for the cervical/dorsolumbar spine and hands-fingers; that motor strength and function were normal; that sensory function remains intact; and that all trigger points were positive in the upper extremities (Medical Packet, pages 293 to 295).
- (12) SHRT report dated March 10, 2011, states the claimant's impairments do not meet/equal a Social Security listing (Medical Packet, page 298).

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 facts above are undisputed:

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

When determining disability, the federal regulations are used as a guideline and require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, the evidence establishes that the claimant is not currently engaged in any substantial gainful activity. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record establishes that the claimant is significantly limited in performing basic physical work activities, as defined below, based on the *de minimus* standard, and for the required duration of 90 days.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

Basic work activities. When we talk about basic work activities, we mean 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).

Therefore, disability is not denied at this step.

At Step 3, the objective medical evidence does not establish that the claimant's impairments meet/equal a Social Security listing.

At Step 4, the objective medical evidence does not establish the claimant's inability to do any of her past work, despite her severe physical impairment. Her past work as short order cook falls within the medical limitations. Therefore, disability is denied at this step.

At Step 5, the objective medical evidence does not establish that the claimant is without a Residual Functional Capacity (RFC) for other work in the national economy.

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

Claimant's disabling complaints above that she has no RFC for any work is not supported by the objective medical evidence of record. Her medical limitations fall within the definition of sedentary work activities, as defined above. Therefore, the claimant would be able to perform, at least, sedentary work. At this level, considering

the claimant's vocational profile (younger individual, age 46, 11th grade education, and past unskilled/semi-skilled work experience) she is not considered disabled under Vocational Rules 201.18 and 201.19. Therefore, disability is denied at steps 4 and 5.

Because the evidence of record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance Benefits.

Therefore, the claimant has not established disability, as defined above, by the necessary competent, material, and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that disability was not medically established.

Accordingly, SDA denial is UPHELD.

/s/

William Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 6, 2011

Date Mailed: June 7, 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 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.

WAS/ar

cc:

[REDACTED]