

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-28768
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: March 14, 2012
County: Sanilac

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on March 14, 2012, from Sandusky, Michigan. Participants on behalf of Claimant included Claimant and her attorney, [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED].

This case was originally approved in August 2008. Since that time, a final determination was issued by the Social Security Administration (SSA) on May 8, 2009. The Department failed to end benefits in accordance with policy at the time of the final determination. However, the decision remains binding on this Administrative Law Judge for the period prior to May 1, 2009. Therefore, this decision will consider June 2009 forward as a new application. Since a final determination was issued for the prior period, the case effectively became a new application beyond the SSA determination date. A new application was filed on February 28, 2011, according to the Department.

The record was extended to allow new evidence submitted at hearing to be reviewed by the State Hearing Review Team (SHRT).

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) 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. On March 28, 2006, Claimant applied to the SSA alleging disability.
2. On August 14, 2008, the Medical Review Team (MRT) approved Claimant for SDA and MA effective July 2008. A review was set for February 2009.
3. On April 22, 2009, the MRT approved at review the Claimant's MA and SDA case. A new review date was established for June 2010.
4. On May 8, 2009, Claimant's appeal of her SSA denied application dated March 28, 2006, was denied at the Appeals Council resulting in a final determination for the application in question.
5. On July 29, 2010, Claimant reapplied for disability with SSA.
6. On February 2, 2011, this application was denied by SSA.
7. On March 7, 2011, the Department prepared and sent a medical packet for Claimant's medical review for her MA-P and SDA case. This MRT packet indicated an application date of July 1, 2009. This was erroneous as the new application was filed on February 28, 2011, according to the Department.
8. On February 28, 2011, an application for MA and SDA was provided to the Department.
9. On March 21, 2011, the MRT denied Claimant's request.
10. On April 1, 2011, Claimant submitted to the Department a request for hearing.
11. April 26, 2011, the SHRT denied Claimant's request.
12. Claimant is 46 years old.
13. Claimant completed education through an Associate's Degree.
14. Claimant has employment experience (last worked March 2006) as an owner/operator of a group home.
15. Claimant's limitations have lasted for 12 months or more.

16. Claimant suffers from severe cervical pain and disc herniation, arthritis, atherosclerosis, hole in heart, GERD, hiatal hernia, left hand wrist drop, neuropathy, migraines, depression, PTSD and fibromyalgia.
17. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

CONCLUSIONS OF LAW

MA-P 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 administers MA-P 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 (RFT).

The SDA program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

Claimant testified to the following symptoms and abilities: requires the use of a walker with a seat, she also uses a normal walker on occasion, she is on oxygen, she is wearing a neck brace for a herniated disc surgery performed in November 2011, green field filter, in constant pain, uses a back brace, uses a left leg brace at home, uses wrist brace for the left hand, uses a nebulizer, needs a shower chair and a toilet chair, has problems with loss of bowel control, not able to bend, stoop, stand on tip toes, not able to manage her own laundry, unable to open and pour her own gallon of milk, she gets help with bathing and dressing, all meals are prepared for her, she is unable to stand long enough to cook, she only leaves her house to go to medical appointments, can sit for an hour at a time because of back problems, and Claimant testified her condition has gotten worse.

Social Security Ruling 02-01 directs adjudicators to consider that the combined effects of obesity with other impairments may be greater than the non-obesity impairment alone. The National Institute of Health Clinical Guidelines for Obesity define three levels of obesity. Level I includes Body Mass Index (BMIs) of 30.0-34.9; Level II includes BMIs of 35.0-39.9; and Level III extreme obesity is considered over 40.0.

Obesity at Level III represents a condition which creates the greatest risk for developing obesity-related impairments. Claimant's weight was 267 lbs and she was 5'5" in height. Claimant's obesity as measured by her BMI may be calculated using the Center for Disease Control and Prevention Body Mass Index calculation found at: http://cdc.gov/nccdphp/dnpa/bmi/adult_BMI/english_bmi_calculator/bmi_calculator.htm.

The formula for calculating BMI is as follows: calculate BMI by dividing weight in pounds by height in inches squared and multiplying by a conversion factor of 703. The formula as applied to Claimant's height and weight yields a BMI of 44.4 or Level III obesity. This level of obesity surely impacts Claimant's spinal/musculoskeletal conditions.

Social Security Ruling SSR-02 provides, in pertinent part:

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet listing 1.04 or its equivalent. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of a listing.

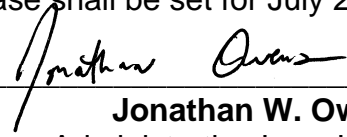
Therefore, Claimant is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of November 2010.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated February 28, 2011, if not done

previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for July 2013.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 6, 2012

Date Mailed: June 7, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

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

JWO/pf

cc:

