

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-15004
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 6, 2012
County: Oakland (63-03)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on February 6, 2012, from Detroit, MI. Claimant appeared and testified. Claimant's son, [REDACTED] appeared and testified as a witness for Claimant. The Department of Human Services (Department) was represented by [REDACTED]

ISSUE

Did the Department properly determine 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 October 13, 2011, Claimant filed an application for MA and SDA benefits. The application requested MA-P retroactive to July 1, 2011.
2. On November 14, 2011, the Department denied Claimant's application for benefits based on a finding that Claimant did not meet the requisite disability criteria.
3. On or about November 17, 2011, Claimant filed a hearing request to protest the Department's determination.

4. Claimant, age fifty-six [REDACTED], received her [REDACTED] [REDACTED]. She is 5'2" and weighs 273 lbs.
5. Claimant last worked as a school administration office clerk (2004-2008) and as a law office clerk and receptionist (1995-2001). Claimant's relevant work history consists exclusively of sedentary work activities.
6. Claimant has a history of chest pain for the past seven years.
7. Claimant was hospitalized for one day in [REDACTED] with chest pain, and visited the ER in [REDACTED] with chest pain.
8. Claimant currently suffers from tachycardia, coronary arterial disease, chest pain and shortness of breath, swollen feet, pustules on the soles of her feet, and depression.
9. Claimant has severe limitations in her ability to ambulate and to conduct most of the activities of daily living. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning her physical impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA 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 (RFT).

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

Federal regulations require the Department to use the same definition for "disabled" as the U.S. Social Security Administration uses for Supplemental Security Income (SSI) benefits applications under Title XVI of the U.S. 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 CFR 416.905.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a five-step sequential evaluation process by which current work activity (Step 1), the severity of the impairment(s) (Steps 2 and 3), current physical and mental impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) (Steps 4 and 5) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, no evaluation under a subsequent step is necessary.

Turning now to the required five-step evaluation, Step 1 requires the trier of fact to determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Claimant is not working. Therefore, Claimant is not disqualified for MA at Step 1 of the sequential evaluation process.

Second, Step 2 requires that 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 means 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).

The purpose of Step 2 in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may screen out at this level only those claims which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimis* hurdle" in the disability determination. The *de minimis* standard is a provision of law that allows the court to disregard trifling matters.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that she has significant physical limitations upon her ability to perform basic work activities such as standing, sitting, bending, walking, driving, and conforming to a routine daily work schedule. Medical evidence clearly establishes that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

As Claimant meets the severity requirement of Step 2, the trier of fact must next consider Step 3 of the sequential consideration of a disability claim. In Step 3 of the sequential consideration 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-Listing of Impairments. This Administrative Law Judge finds that Claimant's medical record does not support a finding that Claimant's impairment is a "listed impairment" or that it is equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found disabled based upon the medical evidence alone. The evaluation of Claimant's case must proceed to Step 4 of the sequential evaluation process. 20 CFR 416.920(d).

In Step 4 of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents the claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based on the medical evidence and objective, physical and mental findings, that Claimant is not capable of the activity required by her past employment. Claimant has presented the required medical data and evidence necessary to support a finding that she is not, at this point, capable of performing such work.

Claimant is currently treating with [REDACTED], internal medicine, for her heart condition, chest pain, GERD, and depression. Claimant has treated with [REDACTED] for 4-5 years. Claimant was also evaluated by [REDACTED], a cardiologist, but could not afford to go in treatment with him. [REDACTED] advised [REDACTED] that he recommended Claimant not engage in "significant activity."

Claimant testified that her feet are currently swollen and are the size of half-gallon milk cartons. She has painful boils on the soles of both feet. She cannot wear shoes of any size (she previously wore size 7-1/2), and at present she mainly sits in bed. Her blood pressure is 220/90, and she is not taking medication as she cannot afford it. She stated her health appears to be worsening.

Since she applied, her condition has worsened and she has experienced changes in her ability to care for her personal needs. Her children help her fix meals, and she eats less because of some medications. She cannot do housework, she has no hobbies, and her social life consists of sitting with family or friends for an hour and talking with them. She testified that she cannot perform her past relevant work because she cannot stand, move, or run errands as she previously did.

In addition to Claimant's testimony, the testimony of her son, [REDACTED], provides further significant details about her condition. [REDACTED] is eighteen years old, and he testified at the administrative hearing until he had to leave to go to work. He helps his mother get out of bed and get to the bathroom. He bathes her by hand while she sits on a bathroom stool, as she cannot use the tub or shower. He coordinates his mother's care with his sister, who also provides similar care for Claimant when [REDACTED] is at work. He cooks, brings food from outside, or orders food for his mother, and at least one

delivery person has a key to the apartment so they can come in and drop off food when necessary.

██████ testified that his mother really cannot walk, and he carries her almost completely on his own. He stated that the boils on the bottoms of her feet make it impossible for her to move and go anywhere. She does not use a cane or walker. In his opinion she is “stressed out.”

Claimant wrote in the Department application forms that she cried all the time. Also, she has insomnia and does not sleep for 2-3 days at a time.

Also in this case, ██████ psychiatrist, evaluated Claimant for the ██████ ██████, and diagnosed dysthymic disorder. Claimant testified she uses the following medications when she has insurance: Zoloft, HCTZ, Calcium, Zantac, Vitamin D, Prilosec, Fioricet, Atarax, an Advair inhaler, Xanax and sleeping pills.

In light of the above credible and un rebutted evidence, it is found and determined that Claimant is unable to perform her past relevant work as an office clerk, law clerk or law office receptionist. Accordingly, as Claimant is not disqualified at Step 4, the sequential evaluation process continues next to Step 5.

In Step 5, the trier of fact must determine if the claimant's impairment(s) prevents the 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 your 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 the claimant reaches Step 5 in the sequential review process, the 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 this point, the burden of proof is on the Department to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

Claimant's age, education and previous work experience are listed in Appendix 2 to Subpart P of Part 404 – Medical-Vocational Guidelines. The applicable section of the Guidelines is found in Table No. 1 – Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s). Claimant's age, education and previous work experience qualify her as disabled at line 201.04 of Table 1.

Claimant is 56 years old, which is considered “advanced age” for purposes of determining what other work she is capable of performing. Claimant’s education level is “high school or more,” but, she is unable to enter directly (“no direct entry”) into a job requiring specific skills. Her previous work experience is of an “unskilled” or no-skills nature of difficulty. It is found and determined that Table 1, line 201.04 states that based on her age, education and previous work experience, Claimant does not have the residual functional capacity to engage in other sedentary work and is found disabled.

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 her 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). In addition, the Department failed to provide vocational evidence to establish 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 Claimant could perform despite her limitations.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. The Department’s denial of MA benefits in this case is REVERSED.

Considering next whether Claimant is disabled for purposes of SDA, Claimant must have a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) 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, she 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 and concludes that Claimant meets the definition of medically disabled under the Medical Assistance and State Disability programs.

Accordingly, the Department is ordered to:

1. Initiate a review of Claimant’s October 13, 2011, application, if it has not already done so, to determine if all other nonmedical eligibility criteria for MA, MA-retroactive and SDA benefits have been met;

2. Initiate procedures to inform Claimant of its determination in writing, and provide MA-P, MA-P retroactive, and SDA benefits to Claimant at the benefit levels to which she is entitled;
3. Assuming that Claimant is eligible for program benefits, initiate procedures to review Claimant's continued eligibility for program benefits in March, 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 8, 2012

Date Mailed: February 8, 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.

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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

JL/pf

cc:

