

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 16009
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 27, 2012
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on February 27, 2012. Claimant appeared and testified. [REDACTED], ES appeared on behalf of the Department of Human Services.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance program (MA-P) and the State Disability Assistance Program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on July 26, 2011.
2. On September 22, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 2).
3. The Department notified the Claimant of the MRT determination on September 26, 2011.
4. On September 29, 2012, the Department received the Claimant's timely written request for hearing. (Exhibit 1).
5. On January 10, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2).

6. The Claimant alleged physical disabling impairments with chronic back and neck pain and cervical herniated disc and cervical spinal stenosis.
7. The Claimant has alleged mental disabling impairment(s) due to depression.
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5' 9" in height; and weighed 140 pounds.
9. The Claimant has the equivalent of a 7th grade education and an employment history working as a general laborer, housekeeper and packaging parts for the auto industry. The Claimant last worked braiding hair. The Claimant's past work would be unskilled.
10. The Claimant is not substantially gainfully employed and is currently not working.
11. An Interim Order was issued on February 27, 2012 and new evidence submitted was transmitted to the State Hearing Review Team.
12. On August 6, 2012 the State Hearing Review Team found the Claimant not disabled. (Exhibit 4).
13. Claimant's limitations have lasted or 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 (DHS or Department) 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 Bridges Reference Manual (BRM).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACCS, Rule 400.3151 through Rule 400.3180.

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 CFR 416.905.

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 the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) 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, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that she is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

The severity of the claimant’s alleged impairment(s) is considered under Step 2. The claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b)(c).

A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual’s physical or mental ability to perform basic work activities. The term “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 second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out 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 qualifies 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).

As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case the Claimant presented medical evidence (which is summarized below). The Claimant's treating doctor, whom she sees monthly, has diagnosed a cervical disc hernia and noted that surgery is needed. The report concludes that the Claimant's condition is deteriorating and that the Claimant cannot meet her needs in the home. There were no reported findings of any mental impairments. (Exhibit 1 pp 14-15).

In April 2011 Claimant saw her treating physician, complaining of numbness in right hand and fingers. The problem list was cervical spinal stenosis, disc bulging continues pain.

On [REDACTED] the Claimant was seen again complaining of pain in her neck and numbness in right hand.

An [REDACTED] report concludes that patient is under my care for multiple medical problems, including a herniated cervical disc. This problem is very serious. (Exhibit 1, pp 22).

An [REDACTED] report indicates cervical spinal stenosis, disc bulging continues, pain in same are. (Exhibit 1, pp. 20).

An MRI of the cervical spine in September 2009 found disc osteophyte complexes and disc protrusions resulting in spinal canal stenosis and indentation of the spinal cord from C-4/C-5 through C-6/C-7. It notes no cord signal abnormality. Unvertebral and facet joint hypertrophic arthropathy resulting in neural foraminal stenosis. (Exhibit 1, pp 30 – 31).

A consultative exam (new medical evidence) obtained by the Department dated [REDACTED] indicates the following:

Under Extremities/Musculoskeletal it notes “handgrip is weak bilaterally. The Patient could get on and off the exam table without difficulty. Her gait is slow. Tandem and tiptoe and heel walking is slowly. Able to bend stoop 60%, difficulty squatting, range of motion of cervical spine is decreased. Lumbar spine range of motion is decreased. Hand grip is 2/5 bilaterally. Straight leg raising is 30 degrees bilaterally. The impression was status post motor vehicle accident, she has chronic neck pain, there are no radicular symptoms. And slight decreased range of motion. Chronic low back pain, lumbar spine range of motion decreased.” (Exhibit 3).

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 sitting, standing, lifting, pushing, pulling, reaching, carrying or handling. Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant’s work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant’s medical record will support a finding that Claimant’s impairment(s) is a “listed impairment” or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

This Administrative Law Judge consulted listing 1.04 Musculoskeletal, Disorders of the Spine when making the evaluation of listings.

The requirements for listing 1.04 Disorders of the spine, (eg. herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, ...) resulting in compromise of a nerve root, or the spinal cord. With:

- A. Evidence of nerve root compression characterized by 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 back, positive straight-leg raising test (sitting and supine); OR

The Claimant's credible testimony was that she had sensory loss in both arms with more severe symptoms on the right side. The Claimant has pain in both arms from shoulders to her hands with numbness. The Claimant testified that she cannot lift more than a quart of milk. Claimant cannot sleep on her right side at night. These symptoms are supported by a finding by the consultative examination that her grip strength is impaired and is 2/5 and is noted to be weak bilaterally and her straight leg raising is 30 degrees bilaterally. (Exhibit 4). Claimant also testified that her ability to make her bed is based upon level of pain she experiences that day. The Claimant has difficulty combing or fixing her hair as it causes her pain. The Claimant can walk half a block and stand a half hour and sit for 15 minutes, and then experiences back pain and pain in her neck.

In this case, this Administrative Law Judge finds, based upon the objective medical evidence and the Claimant's testimony regarding her condition and abilities, that Claimant is considered presently disabled at the third step of the sequential evaluation. Claimant meets the listing for 1.04A, or its equivalent. The medical records establish ongoing severe chronic neck pain with nerve compression and involvement including reference to an MRI demonstrating spinal stenosis and indentation of the spinal cord from C4-C5 through C 6-C7 with muscle involvement in both arms, diminished range of motion in the neck and lower back , and which satisfies the requirements of listing 1.04A.

With regard to steps 4 and 5, when a determination can be made at any step as to the Claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least 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 individual as disabled for purposes of the SDA program.

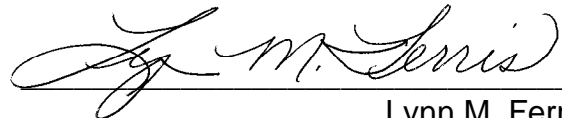
In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is disabled for the purposes of MA and SDA programs. Therefore, the decisions to deny Claimant's application for MA -P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby REVERSED.

1. The Department is ORDERED to initiate processing the Claimant's MA -P and SDA application dated July 26, 2011, and any applicable retro months consistent with the application, and award required benefits, provided Claimant meets all non-medical standards required for eligibility as well.
2. The Department shall supplement the Claimant for any lost benefits (if any) that the Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.
3. The Department is further ORDERED to initiate a review of the Claimant's disability case in August 2013, in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan
Department of Human Services

Date Signed: August 23, 2012

Date Mailed: August 23, 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.

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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 to:

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

LMF/hw

cc:

