

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201224798
Issue No: 2009
Case No: [REDACTED]
Hearing Date: March 15, 2012
DHS-MA SPEC PROCESS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on January 17, 2012. After due notice, a telephone hearing was held on Thursday, March 15, 2012. During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The Claimant was represented by her attorney, [REDACTED]. The Department was represented by [REDACTED] and [REDACTED].

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance based on disability (MA-P)?

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 July 1, 2011, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On December 2, 2011, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that she is capable of performing other work despite her non-exertional impairment.
3. On January 5, 2012, the Department sent the Claimant notice that it had denied the application for assistance.

4. On January 17, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
5. On January 27, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P benefits.
6. On April 25, 2012, after reviewing the additional medical records, the State Hearing Review Team (SHRT) again upheld the determination of the Medical Review Team (MRT) that the Claimant does not meet the disability standard.
7. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
8. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application and the Claimant reported that a SSI appeal is pending.
9. The Claimant is a 46-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4½" tall and weighs 130 pounds. The Claimant has more than a high school education and she was awarded an associated degree. The Claimant is able to read and understand English, and she has basic math skills.
10. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
11. The Claimant has past relevant work experience as a tax preparer where she was required to type, gather information from clients, and discuss tax returns with clients.
12. The Claimant alleges disability due to degenerative disc disease, depression, anxiety, post-traumatic stress disorder, and personality disorder.
13. The objective medical evidence indicates that the Claimant is alert and oriented to time, place, and person.
14. The objective medical evidence indicates that the Claimant has been diagnosed with generalized anxiety disorder, and dependant personality trait. Medical reports conflict with respect to a diagnosis of post-traumatic stress disorder.
15. The objective medical evidence indicates that the Claimant has marked limitations of her ability to understand and remember detailed instructions, maintain attention for extended periods, perform activities within a schedule, work in coordination with others, complete a normal workday

without interruptions, accept instructions and criticism from supervisors, and travel to unfamiliar places.

16. The objective medical evidence indicates that the Claimant underwent anterior cervical fusion at the C5-6 level, which appears excellent, mild disc space narrowing of mild degenerative disc disease at the C4-5 level, and no findings of disc herniations, spinal cord compression, or significant compromise of the intervertebral foramen.
17. Medical reports indicate that the pain Claimant suffers from persistent neck and shoulder pain are related to a pinched nerve root versus facet arthropathy in the right aspect of the cervical spine.
18. The objective medical evidence indicates that a magnetic resonance imaging (MRI) scan revealed post surgical changes at the C5-6 level without focal herniations or central canal stenosis.
19. The objective medical evidence indicates that the Claimant suffers from cephalgia and severe neck pain due to a combination of C7 radiculopathy and right sided cervical facet arthropathy.
20. Medical reports recommend no further diagnostic imaging, continued pharmacological pain management, further epidural steroid injections, physical therapy, and smoking cessation.
21. The objective medical evidence indicates that the Claimant's gait is preserved, she is able to toe walk, and walks without difficulty. She has full flexion, extension, side bending, and rotation of the lumbar spine. She is capable of extension of the cervical spine to 10° and flex to 15°, rotation to the right at 20° and left to 40° before eliciting pain.
22. The objective medical evidence indicates that the Claimant smokes half of a pack of cigarettes on a daily basis.
23. The Claimant is capable of driving, shopping, and washing laundry.
24. The Claimant is capable of showering and dressing herself, and walking for up to a half mile.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will

provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 (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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.
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 not disabled.
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.
4. Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.
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, client is not disabled.

At step one, the undersigned must determine whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 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 404.1572(a) and 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 404.1572(b) and 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 he has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the Claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do his past relevant work, the Claimant is not disabled. If the Claimant is unable to do any past

relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the Claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, he is not disabled. If the Claimant is not able to do other work and meets the duration requirement, he is disabled. Although the Claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy. This is work that the Claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

STEP 1

At Step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity is defined as work activity that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience. Whether the Claimant is performing substantial gainful activity will be determined by federal regulations listed in 20 CFR 416.971 through 416.975.

The Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 2

At Step 2, the Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months.

The Claimant is a 46-year-old woman that is 5' 4½" tall and weighs 130 pounds. The Claimant alleges disability due to degenerative disc disease, depression, anxiety, post-traumatic stress disorder, and personality disorder.

The objective medical evidence indicates the following:

The Claimant is alert and oriented to time, place, and person. The Claimant has been diagnosed with generalized anxiety disorder, and dependant personality trait. Medical

reports conflict with respect to a diagnosis of post-traumatic stress disorder.

The Claimant has marked limitations of her ability to understand and remember detailed instructions, maintaining attention for extended periods, performing activities within a schedule, working in coordination with others, completing a normal workday schedule without interruptions, accepting instructions and criticism from supervisors, and traveling to unfamiliar places.

The Claimant underwent anterior cervical fusion at the C5-6 level, which appears excellent. There is mild disc space narrowing of mild degenerative disc disease at the C4-5 level, and no findings of disc herniations, spinal cord compression, or significant compromise of the intervertebral foramen.

Medical reports indicate that the Claimant suffers from persistent neck and shoulder pain that is related to a pinched nerve root versus facet arthropathy in the right aspect of the cervical spine. A magnetic resonance imaging (MRI) scan revealed post surgical changes at the C5-6 level without focal herniations or central canal stenosis. The Claimant suffers from cephalgia and severe neck pain due to a combination of C7 radiculopathy and right sided cervical facet arthropathy.

Medical reports recommend no further diagnostic imaging, continued pharmacological pain management, further epidural steroid injections, physical therapy, and smoking cessation.

The Claimant's gait is preserved, she is able to toe walk, and walks without difficulty. The Claimant has full flexion extension, side bearing, and rotation of the lumbar spine. The Claimant is capable of extension of the cervical spine to 20° and flex to 15°, rotation to the right at 20° and left to 40° before eliciting pain.

The Claimant smokes a half of a pack of cigarettes on a daily basis.

The Claimant is capable of driving, shopping, and washing laundry. The Claimant is capable of showering and dressing herself, and walking for up to a half mile.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment that meets the severity and duration standard for MA-P and SDA purposes.

STEP 3

At Step 3, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

The Claimant's impairment failed to meet the listing for degenerative disc disease (1.04 Disorders of the spine), because the objective medical evidence does not demonstrate sensory loss or a positive straight leg test. The objective medical evidence does not demonstrate spinal arachnoiditis. The objective medical evidence does not demonstrate that the Claimant has lost the ability to ambulate effectively without assistance.

The Claimant's impairment failed to meet the listing for a shoulder or neck injury (1.02 Major dysfunction of a joint), because the objective medical evidence does not demonstrate has lost the ability to ambulate effectively without assistance, or that she has lost the ability to perform gross and fine movements with her arms.

The Claimant's impairment failed to meet the listing for anxiety, because the objective medical evidence does not demonstrate that the Claimant is unable to function independently outside of her home. Although the Claimant often chooses to isolate herself, the objective medical evidence indicates that the Claimant is capable of driving, and shopping. The Claimant is capable of living independently and caring for her personal needs. The Claimant is capable of taking herself to appointments. The Claimant testified that she prefers to do her shopping at a store where she was previously employed. Although the objective medical evidence indicates that the Claimant has marked difficulties maintaining concentration, the objective medical evidence does not demonstrate that the Claimant has marked restrictions of activities of daily living and social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompression.

The Claimant's impairment failed to meet the listing for post-traumatic stress disorder, because the objective medical evidence indicates that it has been ruled out as a diagnosis.

Conflicting medical reports indicate that the Claimant has been diagnosed with post-traumatic stress disorder. For the purposes of evaluating whether the Claimant's condition fit the description of a Social Security Administration disability listing, post-traumatic stress disorder is evaluated as an anxiety disorder. For the reasons listed above, the Claimant does not meet the listing for anxiety or post-traumatic stress disorder.

The Claimant's impairment failed to meet the listing for personality disorder, because the objective medical evidence does not demonstrate that the Claimant has marked restrictions of her activities of daily living, social functioning, or that she suffers from repeated episodes of decompression.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

At Step 4, the Claimant's residual functional capacity (RFC) is examined to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

After careful consideration of the entire record, the undersigned finds that the Claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b).

The Claimant has past relevant work experience as a tax preparer where she was required to gather information from clients, type information into a computer, and discuss tax returns with clients. The Claimant's prior work as a tax preparer required her work in an office environment. The Claimant's prior work fits the description of light work.

The Claimant' has marked limitations of her ability to work effectively in coordination with others. The Claimant has marked limitations of her ability to accept instructions and criticism from supervisors and perform activities within a work schedule. The Claimant has marked limitations of her ability to maintain attention and concentration for extended periods of time.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work in which she has engaged in, in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and 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.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do light or sedentary tasks if demanded of her. The Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments for a period of 12 months. The Claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

The Claimant was able to answer all the questions at the hearing and was responsive to the questions. The Claimant was oriented to time, person and place during the hearing.

The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Claimant is 46-years-old, a younger person, under age 50, with a high school education and above, and a history of semi-skilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform light work, and Medical Assistance (MA) is denied using Vocational Rule 20 CFR 202.21 as a guide.

It should be noted that the Claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that the Claimant was not eligible to receive Medical Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied the Claimant's application for Medical Assistance benefits. The Claimant should be able to perform a wide range of light or sedentary work even with her impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED**.

/s/

Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 14, 2012

Date Mailed: May 14, 2012

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 60 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.

KS/tb

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