

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-37437
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 17, 2012
County: Barry

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on May 17, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

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 new evidence was forwarded to the State Hearing Review Team (SHRT) for consideration. On September 25, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for State Disability Assistance (SDA)?

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 November 9, 2011, Claimant filed an application for SDA benefits alleging disability.
- (2) On February 2, 2012, the Medical Review Team (MRT) denied Claimant's application for SDA for lack of duration.

- (3) On February 21, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On February 27, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On April 18, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform a wide range of unskilled, medium work. (Department Exhibit B, pp 1-2).
- (6) On September 25, 2012, after reviewing the additional medical evidence, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform a wide range of unskilled, light work. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of fibromyalgia, transient ischemic attacks (TIA's), mild strokes, rheumatoid arthritis, left rotator cuff, asthma, depression, panic attacks, lumbar degenerative joint disease, bilateral hip degenerative joint disease, complicated migraines, hyperlipidemia and heat edema.
- (8) On May 24, 2011, Claimant saw her primary care physician to discuss the results of her CT scan. She also had a sinus infection. She expressed concern that she was having symptoms of TIA's, because there were times when she was not able to express herself. The words would not come to mind that she knows she knows. She stated she feels like her tongue does not work when she tries to talk so her words come out blurred together. She also stated that she drops things so she had to quit her cooking job and is now doing dishes. She has also started having panic attacks again. The CT of her brain is normal. She stated she likes the Lyrica because her fibromyalgia pain is well controlled. She was oriented to person, place and time and her mood and affect were normal. She was diagnosed with allergic rhinitis. Her physician had a long discussion with Claimant regarding her medications. He noted that the symptoms she is concerned about could be related to Lyrica. However, she was resistant to going off Lyrica for fear of returning pain. She does not want to stop the Topamax due to the return of her migraines. She was encouraged to think about changing the medications for a week or so, and returning to discuss her concerns further. (Department Exhibit A, pp 63-66).
- (9) On June 28, 2011, Claimant saw her physician to complete her physical exam for her childcare job. She has arthritis and fibromyalgia and is working with 1 year old children in a childcare setting. She has been able to perform all job duties without difficulty and without exacerbating her fibromyalgia or arthritis. She reports feeling well. She is going to work on

her exercising and diet and refused cholesterol medications at this time. She was oriented to person, place and time and her mood and affect were normal. (Department Exhibit A, pp 47-50).

- (10) On September 9, 2011, Claimant presented to her physician for medication refills of Topamax, Prilosec, Diclofenac and Lyrica. She also reported that her pain has increased since starting to work in childcare. On exam, she had decreased range of motion. She reported morning stiffness. Her physician had a lengthy discussion with her regarding the benefits of water exercise for her arthritis and fibromyalgia. (Department Exhibit A, pp 40-43).
- (11) On November 1, 2011, Claimant saw her physician presenting with a productive cough, chest heaviness, runny/stuffy nose, irritable throat, fatigued, increased body aches and she was having emotional issues. The examining physician noted Claimant was acutely ill and depressed. She was diagnosed with acute sinusitis and prescribed Keflex and Zolof. (Department Exhibit A, pp 33-36).
- (12) On November 9, 2011, Claimant participated in an assessment at [REDACTED] [REDACTED] [REDACTED]. She reported experiencing some depression and anxiety due to the recent loss of her job and increased physical pain from multiple health issues. She shared that she was released from her job at a daycare center. Her symptoms are in response to the loss of work and are causing some marked distress and impairment in her social and occupational functioning. She has been diagnosed with fibromyalgia and migraines and reports that her pain has been increasing gradually over the last few years. Claimant was lethargic, had a depressed mood and a flattened affect. She reported a suicide attempt in 2004 when she tried to overdose on prescription medication. She denies suicide ideology at this time. Diagnosis: Axis I: Adjustment disorder with mixed anxiety and depressed mood; Axis V: GAF=38. (Department Exhibit A, pp 190-201).
- (13) On April 3, 2012, Claimant was admitted to the hospital with numbness on her left side, facial droop, slurred speech as well as weakness and an inability to walk. She had a history of migraines. She has had this in the past and was told that these complicated migraines are actually transient ischemic attacks. Per Neurology, TIA's are not equal to complicated migraines. A neurological work up was performed. MRI of the brain did not show any abnormalities. Echocardiogram showed an ejection fraction of 55-60% and some mild redundant mitral valve without any evidence of prolapsing mitral valve or regurgitation. No pericardial effusion. The resulting opinion was that transient ischemic attack (TIA) and cerebrovascular accident (CVA) was unlikely and it was a complicated migraine. Her Topamax was increased and she was released 3 days later on April 6, 2012 still a little weak. (Department Exhibit A, pp 202-225).

- (14) Claimant is a 53 year old woman whose birth day is [REDACTED]. Claimant is 5'3" tall and weighs 160 lbs. Claimant completed high school.
- (15) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Section 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

"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. [SDA = 90 day duration].

A set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge 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/she 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/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge 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; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals 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 meets or medically equals 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 Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her 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/her 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 Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that she has not worked since October, 2011. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity,

persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with fibromyalgia, depression and migraines. It must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, Claimant's impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3 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. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant's past relevant employment has been as a cook, dishwasher and cafeteria worker. The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 90 days or more and prevent her from performing the duties required from her past relevant employment for 90 days or more. Accordingly, Claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that Claimant does have residual function capacity. 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. See discussion at Step 2 above. Findings of Fact 7-14.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light duties. A review of Claimant's voluminous medical records does not support her testimony that she suffers from transient ischemic attacks.

Therefore, the Administrative Law Judge finds that Claimant failed to provide the necessary objective medical evidence to establish that she is mentally or physically incapable of doing basic work activities. Moreover, there is no evidence that Claimant has a severe impairment that meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1.

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 C.F.R. 416.967. 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 C.F.R. 416.967(a). 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 C.F.R. 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 C.F.R. 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 C.F.R. 416.967(d).

Claimant testified that she has worked as a daycare provider, dishwasher and cafeteria worker. She stated she can walk ½ a block with a cane, stand for 15 minutes, sit for an hour and is limited to carrying 10 pounds. It is noted that her medical records did not reflect she had a cane or that she needed one and there was nothing in the records limiting her to carrying only 10 pounds.

As a result, Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 C.F.R. 416.920(c). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows she can perform light work. Under the Medical-Vocational guidelines, a individual approaching advanced age 50 - 54 (Claimant is 53 years of age), with a high school education and an unskilled work history is not considered disabled pursuant to Medical-Vocational Rule 202.13. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled

person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 Claimant was not eligible to receive State Disability 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 Claimant's application for State Disability Assistance benefits.

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

It is SO ORDERED.

/s/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 15, 2012

Date Mailed: October 15, 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 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 mailing 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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