

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

IN THE MATTER OF:



Reg. No: 201243659
Issue No.: 2009, 4031
Case No: [REDACTED]
Hearing Date: July 21, 2012
Menominee County DHS

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 March 26, 2012. After due notice, a telephone hearing was held on June 21, 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 personally appeared and provided testimony.

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) and 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 January 4, 2012, the Claimant submitted an application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits alleging disability.
2. On March 1, 2012, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) and State Disability Assistance (SDA) because it determined that her impairments are non-severe and do not meet the 12 month durational requirement.
3. On March 6, 2012, the Department sent the Claimant notice that it had denied the application for assistance.

4. On March 26, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
5. On May 14, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P and SDA benefits.
6. On July 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 54-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 107 pounds. The Claimant is a high school graduate. The Claimant is able to read and write and does have 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 factory worker where she was required to lift 10 pounds and stand for up to 10 hours.
12. The Claimant alleges disability due to fibromyalgia, arthritis, degenerative disc disease, and a right rotator cuff injury.
13. The objective medical evidence indicates that the Claimant has been diagnosed with a right shoulder rotator cuff tear.
14. The objective medical evidence indicates that a magnetic resonance imaging (MRI) scan showed a full thickness rotator cuff tear and some fluid in the subacromial / subdeltoid bursa.
15. The objective medical evidence indicates that there is degenerative arthritis in the acromioclavicular joint and perhaps a small tear of the long head of the biceps tendon.
16. The objective medical evidence indicates that there is a small amount of shoulder joint effusion.

17. The objective medical evidence indicates that muscle strength of the Claimant's bilateral upper extremities was rated at 4/5, and muscle strength of her bilateral lower extremities was rated at 5/5 in all muscle groups.
18. The objective medical evidence indicates that the results of a sensory examination of the Claimant's bilateral upper and lower extremities was normal.
19. The objective medical evidence indicates that the Claimant suffers from right shoulder pain with internal rotation in the anterior aspect of the shoulder.
20. The objective medical evidence indicates that there are moderate hypertrophic degenerative changes involving the acromioclavicular joint and a probable partial tear involving the bicep.
21. The objective medical evidence indicates that on December 20, 2011, the Claimant underwent right shoulder arthroscopy with subacromial decompression and mini-open rotator cuff repair.
22. The objective medical evidence indicates postsurgical changes with prominent abnormality at the rotator cuff insertion that are most consistent with a full thickness supraspinatus tear without significant restriction.
23. The objective medical evidence indicates that the alignment of the Claimant's pelvis is normal with no fractures.
24. The objective medical evidence indicates that the Claimant has normal symmetric hips, normal sacroiliac joints, and no bony or joint abnormalities were seen.
25. The objective medical evidence indicates that there is moderate degenerative changes of the Claimant's cervical spine at the C4 to C6 levels.
26. The objective medical evidence indicates that there is moderate disc height loss and desiccation at the C4-5 level with moderate posterior disc osteophyte complex and mild uncovertebral spurs, but no significant central stenosis and minimal right neural foraminal narrowing.
27. The objective medical evidence indicates that there is severe loss of disc height and desiccation at the C5-6 level with moderate disc osteophyte complex, moderate uncovertebral spurs, minimal narrowing of the central canal, and mild neural foraminal narrowing.

28. The objective medical evidence indicates that there is moderate disc height loss and desiccation at the C6-7 level with broad based posterior disc osteophyte complex, mild uncovertebral spurring, moderate foraminal narrowing, and no significant central stenosis.
29. The objective medical evidence indicates that the Claimant has a range of motion in her spine that is slightly decreased in left side rotation, and lumbar range of motion was near normal.
30. The objective medical evidence indicates that the Claimant's range of motion is normal with subjective pain.
31. The objective medical evidence indicates that straight leg tests were negative bilaterally.
32. The objective medical evidence indicates that the Claimant underwent bilateral C6-7 medial branch block under fluoroscopic guidance on September 1, 2011. Medical reports indicate that the Claimant tolerated the procedure well and experienced a 60% reduction of pain.
33. The objective medical evidence indicates that the Claimant has a sedimentation rate of 10, which is within the normal range.
34. Medical reports indicate negative results for an anti-nuclear antibody screen.
35. The objective medical evidence indicates negative exercise cardiac scintigraphy with no evidence of ischemia or scar.
36. The objective medical evidence indicates that there is preserved left ventricular systolic function, ejection fraction is 70%, there is normal ventricular volumes, and good exercise tolerance at a metabolic equivalent of task (MET) level of 10.2.
37. The objective medical evidence indicates that the Claimant's left atrium is normal in diameter.
38. The objective medical evidence indicates that the Claimant's aortic root is normal in size with normal diameter, the aortic root is mildly thickened, and the aortic valve is mildly thickened with normal flow.
39. The objective medical evidence indicates that the Claimant's right ventricle is normal in size and function.
40. The objective medical evidence indicates that the pulmonic valve is poorly visualized but pulmonary outflow velocity is within normal limits.

41. The objective medical evidence indicates that diastolic filling parameters are grossly within normal limits.
42. The objective medical evidence indicates that the mitral valve presents mild to moderate thickening and redundancy of the anterior leaflet with no overt prolapse and trace regurgitation.
43. The objective medical evidence indicates that the tricuspid valve has a normal appearance with trace regurgitation noted.
44. The objective medical evidence indicates that the Claimant is capable of unassisted ambulation.
45. The Claimant smokes a pack of cigarettes on a daily basis and has been diagnosed with tobacco dependence.
46. The Claimant is a licensed driver and is capable of driving a vehicle.
47. The Claimant is capable of preparing meals and shopping for groceries.
48. The Claimant is capable of sweeping floors, washing dishes, and washing laundry.
49. Medical reports indicate that the Claimant should be capable of functioning at approximately a modified light duty category, which would allow her to lift up to 20 pounds on an occasional basis.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services

(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 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.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on 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.

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

STEP 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.

At step two, a determination is made 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.

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, or result in death.

The Claimant is a 54-year-old woman that is 5' 4" tall and weighs 107 pounds. The Claimant alleges disability due to fibromyalgia, arthritis, degenerative disc disease, and a right rotator cuff injury.

The objective medical evidence indicates the following:

The Claimant has been diagnosed with a right shoulder rotator cuff tear. A magnetic resonance imaging (MRI) scan showed a full thickness rotator cuff tear and some fluid in the subacromial / subdeltoid bursa. There is degenerative arthritis in the acromioclavicular joint and perhaps a small tear of the long head of the biceps tendon. There is a small amount of shoulder joint effusion. Muscle strength of the Claimant's bilateral upper extremities was rated at 4/5, and muscle strength of her bilateral lower extremities was rated at 5/5 in all muscle groups. A sensory examination of the Claimant's bilateral upper and lower extremities produced normal results. The Claimant suffers from right shoulder pain with internal rotation in the anterior aspect of the shoulder. There are moderate hypertrophic degenerative changes involving the acromioclavicular joint and a probable tear involving the bicep.

On December 20, 2011, the Claimant underwent right shoulder arthroscopy with subacromial decompression and mini-open rotator cuff surgery. There are postsurgical changes with prominent abnormality at the rotator cuff insertion that are most consistent with a full thickness supraspinatus tear without significant restriction.

The Claimant's pelvis is aligned normally, and there are no fractures observed. The Claimant has normal symmetric hips, normal sacroiliac joints, and no bony or joint or abnormalities.

There is moderate degenerative changes of the Claimant's spine at the C4 to C6 levels. There is moderate disc height loss and desiccation at the C4-5 level with moderate posterior disc osteophyte complex and mild uncovertebral spurs, but no significant central stenosis and minimal right neural foraminal narrowing. There is severe loss of disc height and desiccation at the C5-6 level with moderate disc osteophyte complex, moderate uncovertebral spurs, minimal narrowing of the central canal, and mild neural foraminal narrowing. There is moderate disc height loss and desiccation at the C6-7 level with broad based posterior disc osteophyte complex, mild uncovertebral spurring, moderate foraminal narrowing, and no significant central stenosis.

The Claimant has a range of motion in her spine that is slightly decreased in left side rotation, and lumbar range of motion was near normal. The Claimant's range of motion is near normal with subjective pain. Straight leg tests were negative bilaterally.

The Claimant underwent bilateral C6-7 medial branch block under fluoroscopic guidance on September 1, 2011. Medical reports indicate that the Claimant tolerated the procedure well and experienced a 60% reduction of pain.

The Claimant has a sedimentation rate of 10, which is within the normal range. Anti-nuclear antibody screen results are negative.

Exercise cardiac scintigraphy results are negative and there is no evidence of ischemia or scarring. Left ventricular systolic function is preserved, ejection fraction is 70%, there is normal ventricular volumes, and good exercise tolerance is a metabolic equivalent of task (MET) level of 10.2. The left atrium is normal in diameter. The Claimant's aortic root is normal in size with normal diameter, the aortic root is mildly thickened, and the aortic valve is mildly thickened with normal flow. The Claimant's right ventricle is normal in size and function. The Claimant's pulmonic valve is poorly visualized but pulmonary outflow velocity is within normal limits. The Claimant's mitral valve presents mild to moderate thickening and redundancy of the anterior leaflet with no overt prolapse and trace regurgitation. The Claimant's tricuspid valve has a normal appearance with trace regurgitation noted.

The Claimant is capable of unassisted ambulation.

The Claimant smokes a pack of cigarettes on a daily basis and has been diagnosed with tobacco dependence.

The Claimant is a licensed driver and is capable of driving a vehicle.

The Claimant is capable of preparing meals and shopping for groceries. The Claimant is capable of sweeping floors, washing dishes, and washing laundry. The Claimant should be capable of functioning at approximately at modified light duty category, which would allow her to lift up to 20 pounds on an occasional basis.

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

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.

At step three, a determination is made 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.

The Claimant's impairment failed to meet the listing for a back injury under section 1.04 Disorders of the spine, because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant had been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively. The objective medical evidence indicates moderate degenerative changes of the Claimant's spine. There is a finding of a severe loss of disc height and desiccation at the C5-6 level, but no finding of an impairment that matches a listing in the federal regulations. The objective medical evidence supports a finding that the Claimant has only a slight reduction of range of motion while suffering from a subjective amount of pain. The Claimant experienced a 60% reduction of pain following treatment of her spine at the C6-7 level on September 1, 2011.

The Claimant's impairment failed to meet the listing for arthritis under section 14.09 Inflammatory arthritis, or a shoulder injury under section 1.02 Major dysfunction of a joint, because the objective medical evidence does not demonstrate an impairment involving a weight-bearing joint and resulting in an inability to ambulate effectively. The objective evidence does not support a finding that the Claimant lacks the ability to perform fine and gross movements with each upper extremity. The objective medical evidence indicates that the Claimant has a sedimentation rate of 10, which is within the normal range. The objective medical evidence indicates that the Claimant is capable of unassisted ambulation. Medical reports indicate that the Claimant should be capable of modified light duty work and lifting up to 20 pounds on an occasional basis.

The objective medical evidence does not demonstrate a finding that the Claimant has been diagnosed or treated for fibromyalgia, or that her condition fits the description of an impairment listed in the federal code of regulations.

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

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of 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, a determination is made on 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.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant's condition is improving and that she has the residual functional capacity to perform sedentary or light work as defined in 20 CFR 404.1567 and 416.967.

The Claimant has past relevant work experience as a factory worker where she was required to lift 10 pounds and stand for up to 10 hours. Medical reports indicate that the Claimant should be capable of functioning at approximately a modified light duty category, which would allow her to lift up to 20 pounds on an occasional basis.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is unable 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.

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 the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made 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.

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.

Sedentary work. 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 CFR 416.967(a).

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'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 54 years-old, a person closely approaching advanced age, with a high school education, and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work or light work, and Medical Assistance (MA) and State Disability Assistance (SDA) is denied using Vocational Rule 20 CFR 202.13 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's Program 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 261. Because the Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the Claimant is unable to work for a period exceeding 90 days, the 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 the Claimant was not eligible to receive Medical Assistance and/or 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 the Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability

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: July 31, 2012

Date Mailed: July 31, 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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