

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

IN THE MATTER OF:



Reg. No: 201244341
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: June 21, 2012
Clare 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 April 9, 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 27, 2012, the Claimant submitted an application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits alleging disability.
2. On March 30, 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 she is capable of performing past relevant work despite her impairments.
3. On April 3, 2012, the Department sent the Claimant notice that it had denied the application for assistance.
4. On April 9, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On May 16, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P and SDA benefits.
6. On July 31, 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 49-year-old woman whose birth date is [REDACTED]. Claimant is 5' 3" tall and weighs 200 pounds. The Claimant attended school through the 6th grade. 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 in a grocery store where she was required to unload trucks and stock shelves.
12. The Claimant alleges disability due to diabetes, osteoporosis, osteoarthritis, and manic depression.
13. The objective medical evidence indicates that the Claimant has a reduced range of motion of her lateral flexion of dorsolumbar spine.
14. The objective medical evidence indicates that the Claimant refused to have the range of motion of her extension of dorsolumbar spine to be determined.
15. The objective medical evidence indicates that the Claimant has a reduced range of motion of the flexion of her knees.
16. The objective medical evidence indicates that the Claimant has a small 8 mm focus of bone marrow edema type signal seen in the symphysis pubis on the right of indeterminate etiology.
17. The objective medical evidence indicates that the Claimant's hip joints do not appear to be significantly narrowed and there is no evidence of avascular necrosis of the femoral heads.

18. The objective medical evidence indicates that there is some mild trachanteric bursitis.
19. The objective medical evidence indicates that there are no disc protrusions, herniations, or disc bulging.
20. The objective medical evidence indicates that the intervertebral disc spaces are maintained, the vertebral bodies are normal stature, the spinal canal and neural foramina are of adequate size, and the lower spinal cord and conus appear unremarkable.
21. The objective medical evidence indicates that the Claimant's motor strength is normal and muscle tone is normal.
23. The objective medical evidence indicates that the Claimant has fair control of her non-insulin dependent diabetes mellitus.
24. The objective medical evidence indicates that the Claimant has been diagnosed with mood disorder, depressive disorder, and social phobia.
25. The objective medical evidence indicates that the Claimant has been diagnosed with major depressive disorder and a pain disorder associated with both psychological factors and a general medical concern.
26. The objective medical evidence indicates that the Claimant is alert and oriented to person, place, and time.
27. The objective medical evidence indicates that the Claimant's speech is logical, her thoughts coherent, and she has goal direction.
28. The objective medical evidence indicates that the Claimant's mood is dysphoric and anxious. Her affect is constricted and potentially labile. Her judgment and insight are fair. Her cognition is grossly intact. There is no formal thought disorder.
29. The objective medical evidence indicates that the Claimant is able to understand, retain, and follow simple instructions.
30. The objective medical evidence indicates that the Claimant can be expected to understand simple changes in the work environment.
31. The objective medical evidence indicates that the Claimant has been diagnosed with learning problems.
32. The objective medical evidence indicates that the Claimant has serious symptoms and impairments in social and occupational functioning.
33. The Claimant smokes approximately four cigarettes on a daily basis.

34. The objective medical evidence indicates that the Claimant continues to use marijuana.
35. The Claimant lives alone and is capable of caring for her personal needs.
36. The Claimant is capable of preparing meals and shopping for groceries.
37. The Claimant is capable of picking up, wiping sinks, and wiping counters.

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 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, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her 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, she 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 49-year-old woman that is 5' 3" tall and weighs 200 pounds. The Claimant alleges disability due to diabetes, osteoporosis, osteoarthritis, and manic depression.

The objective medical evidence indicates the following:

The Claimant has a reduced range of motion of her lateral flexion of her dorsolumbar spine. The Claimant has a reduced range of motion of the flexion of her knees. The Claimant has a small 8 mm focus of bone marrow edema type signal in the symphysis pubis on the right of indeterminate etiology. The Claimant's hip joints do not appear to be significantly narrowed and there is no evidence of avascular necrosis of the femoral heads. There is some mild trachanteric bursitis. There are no disc protrusions, herniations, or disc bulging. The intervertebral disc spaces are maintained, the vertebral bodies are normal stature, the spinal canal and neural foramina are of adequate size, and the lower spinal cord and conus appear unremarkable. The Claimant's motor strength is normal and muscle tone is normal.

The Claimant refused to have the range of motion of her extension of dorsolumbar spine to be determined.

The Claimant has fair control of her non-insulin dependent diabetes mellitus.

The Claimant has been diagnosed with mood disorder, depressive disorder, and social phobia. The Claimant has been diagnosed with major depressive disorder and a pain disorder associated with both psychological factors and a general medical concern. The Claimant is alert and oriented to person, place, and time. The Claimant's speech is logical, her thoughts are coherent, and she has goal direction. The Claimant's mood is dysphoric and anxious. The Claimant's affect is constricted and potentially labile. The Claimant's judgment and insight are fair. The Claimant's cognition is grossly intact. The Claimant does not have a formal thought disorder. The Claimant is able to understand, retain, and follow simple instructions. The Claimant can be expected to understand simple changes in the work environment. The Claimant has a learning problem. The Claimant has serious symptoms and impairments in social and occupational functioning.

The Claimant smokes approximately four cigarettes on a daily basis. The Claimant continues to use marijuana.

The Claimant is capable of living alone and is capable of caring for her own personal needs. The Claimant is capable of preparing meals and shopping for groceries. The

Claimant is capable of picking up, wiping sinks, and wiping counters.

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 under section 1.02 Major dysfunction of joints or section 14.09 Inflammatory arthritis, because the objective medical evidence does not demonstrate that the Claimant is unable to ambulate effectively, or that she had lost the ability to perform fine or gross movements with her upper extremities.

The Claimant's impairment failed to meet the listing for manic depression under section 12.04 Affective disorders, because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of her activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation or that she is unable to function outside a highly supportive living arrangement.

The Claimant's non-insulin dependent diabetes does not fit the description for any impairment listed in the federal code of regulations, and the evidence does not support a finding that her diabetes had caused a disabling impairment in another body system.

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 her ability to do physical and mental work activities on a sustained basis despite limitations from her 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 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 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.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant 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 in a grocery store where she was required to unload trucks and stock shelves. The Claimant's prior work required her to lift less than 10 pounds frequently. The Claimant's prior work fits the description of light work.

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 her residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, she is not disabled. If the Claimant is not able to do other work and meets the duration requirement, she 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).

Medium work. 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 CFR 416.967(c).

Heavy work. 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 CFR 416.967(d).

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 49 years-old, a younger person, under age 50, with a limited 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 202.17 as a guide.

We will use each of the age categories that applies to you during the period for which we must determine if you are disabled. We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case. 20 CFR 416.963.

If the Claimant's impairments are evaluated as a 50-year old person, with a limited education, a history of unskilled work, and a residual functional capacity to perform sedentary work or light work, and Medical Assistance (MA) and State Disability Assistance (SDA) would be denied using Vocational Rule 20 CFR 202.10 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 Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

The Claimant testified that she does not use any recreational drugs, but the objective medical evidence indicates a considerable history and continuing use of marijuana. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-

121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that the Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

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: August 13, 2012

Date Mailed: August 13, 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

cc:

