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

IN THE MATTER OF:



Reg. No.:
Issue No.:
Case No.:
Hearing Date:
County:

2012-52910 4031

August 9, 2012 Ogemaw County

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge upon the Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which gov ern the administrative hearing a telephone hearing was commenced on August 9, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included A

During the hearing, Claimant wa ived the time period for the i ssuance of this decision in order to allow for the submission of addi tional medical evidence. The new evidence was forwarded to the State Hearing Review Team (SHRT) for consideration. On October 5, 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 Se rvices (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 March 15, 2012, Claimant filed an application for SDA benefits alleging disability.
- (2) On April 19, 2012, the Medical Re view Team (MRT) denied Claimant's application for SDA, indic ating Cla imant's alleged impairment lacked duration. (Department Exhibit B, pp 23-24).
- (3) On April 24, 2012, the department s ent out notice t o Claimant that her application for SDA had been denied.

- (4) On May 4, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 27, 2012, the State Hear ing Review Team (SHRT) upheld the denial of SDA benefit s indicating Claimant retains the capacity to perform a wide range of simple, unskilled, light work. (Department Exhibit B).
- (6) Claimant has a his tory of post traumatic stress disorder, asthma, depression, arthritis, lumbar degenerat ive disc disease, bilater al neural foraminal narrowing at the L5-S1 le vel, radiculopathy, depression and anxiety.
- (7) Claimant is a 27 year old wo man whos e birthday is Claimant is 5'5" tall and weighs 160 lb s. Claimant completed the nint h grade. She has not worked since 2008.
- (8) Claimant had not applied for Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Adminis trative Manual (BAM), the Bridges Elig ibility Manual (BEM), and the Reference Tables Manual (RFT).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), th *e* Bridges Eligibilit y 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 manual s. 2004 PA 344, Se c. 604, es tablishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department sha II operate a state di sability assistance program. Except as provided in subsection (3), persons eligible for this program shall includ e needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship re quirement who are at least 18 years of age or emanc ipated minors meeting one or more of the following requirements: (b) A per son with a physical or mental impairment whic h meets federal SSI disab ility standards, exce pt that the minimum duration of the dis ability 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 defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment 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(a). The person claiming a physical or mental disability has the burden to esta blish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, t he federal regulations require several factors to be considered including: (1) the location/ duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the ext ent of his or her function and limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The fivestep analysis requires the trier of fact to cons ider an individual's current work activit y; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to det ermine whether an individual can perform past relev ant work; and residual functiona I capacity along with vocational factors (e.g., age, education, and work experienc e) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disable ed, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an indi vidual's residual functional capacity is

assessed before moving from Step 3 to St ep 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual f unctional capacity is the most an indiv idual can do despite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residual functional capacity assessment is eval uated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an i ndividual's functional capacity to perform basic work activities is evaluated and if found that the individ ual h as the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the i ndividual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impairment or combi nation of impairments is not severe if it does not signific antly limit an i ndividual's physical or m ental ability to do basic work activities. 20 CFR 416.921(a). The in dividual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the i ndividual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she has not worked since 2000. Theref ore, she is not dis qualified from receiving disability benefits under Step 1.

The severity of the individ ual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be severe. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an in dividual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a di sability claim obviously lacking in medical merit. *Higgs v Bowe n*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qu alifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disabi lity due to post traumatic stress disorder, asthma, depression, arthritis, lumbar de generative disc dis ease, bilateral neura l foraminal narrowing at the L5-S1 level, radiculopathy, depression and anxiety.

On November 18, 2010, x-rays of Claimant's lumbar spine identified no ac ute and no chronic processes.

On March 6, 2011, five x-rays of the lumbar spine were performed. There was normal alignment of the lumbar spine. No fracture lines wer e visualized. Bone density was within normal limits. No significant degener ative changes. There was a small approximately 0.5 mm calcification of the lumbar spine at the L4 level. This could have represented a small ureteral stone.

On October 27, 2011, Claimant was seen at t he clinic for follow-up of her CT scan results. She had radicular symptoms for wh ich lumbar spine x-rays were obtained on 11/18/10 at the emergency room and the studies were normal. Her pain progressed and a s ubsequent CT scan was obtained where s he is noted to have cir cumferential disc osteophyte complexes at t he L4-L5 and L5- S1 levels with bilateral lat eral recess and bilateral neuroforaminal narrowing. It was suggested that if her radicular symptoms persisted, that an MRI of her lumbosacral spine be o btained. She continues to hav e chronic pain causing irritability and interferes with her activities of dai ly living. Her pain has intensified her depressive c omplaints which appear to be r efractory to Elav il. She was agreeable to a trial of Prozac. Ther e is subjective tenderness in the inferior lumbosacral spine without evidence of paraspi nal spasm. No obvio us sc oliosis. No weakness in the lower extremities. Left sitting root test is positive with pain referred into the lumbosacral spine.

On November 10, 2011, she underwent an MRI of the lu mbosacral spine where she was found to have a moderate left eccentri c broad based protrusion of L5-S1 with leftsided subarticular zone narro wing and moderate to severe bilateral neural foraminal narrowing. She disc ontinued Ultram, indicating it was ineffective for pain r elief. She achieves minimal pain relief wit h the use of Vicodin and had v oluntarily increased it. She was cautioned against the potential for dependency.

On February 20, 2012, Claimant was treat ed for low back pain and anxiety. Her physician expressed concerns about the addiction potentia I associated with analgesic and anxiolytic. She had an MRI which confirm ed a left eccentric broad based protusion of the L5 and S1 with moderate to severe bi lateral neural foraminal narrowing. Her gait appeared t o have improved from her 15 pound weight loss. Patellar ref lexes were

diminished. Sitting root test was positive with pain referred into the midline lumbosacral spine. No muscle wasting in the lower extremities. No kyph osis or scolio sis. There was no evidence of lumbar spasm. Mood and affect were appropriate.

On March 22, 2012, Claimant's treating physician conducted a medical exam. Claimant is diagnos ed with degenerative disc disease with radiculopa thy, post traumatic stress disorder, depression and anxiety. She has radicular pain in her low back radiating down her legs. She is unable to sit for long per iods or sleep without discomfort. She has a limping gait. Diminished patellar reflexes. Sitting root test positive for pain referred to midline lumbosacral spine. Her mood and affect were appropriate. Her examining physician opined that Claimant's condition was stable and she is able to meet her needs in the home.

As previously noted, Claimant bears the burden to pr esent sufficient objective medical evidence to substantiate the alleged disab ling impairment(s). In the present case, Claimant testified that she had post trau matic stress disorder, asthma, depression, arthritis, lumbar degenerative disc disease with radiculopathy and depress ion. Based on the lac k of objective medical evidence t hat the alleged impairment(s) are sever e enough to reach the c riteria and definition of disability, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability As sistance program: to receive State Disability Assist ance, a person must be disabled, caring for a disable d 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 exc eeding 90 days, Claimant does not meet the disability crit eria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the SDA benefit program.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.

<u>/s/</u>

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

Date Signed: October 31, 2012

Date Mailed: November 1, 2012

NOTICE: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party wit hin 30 days of the ma iling date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 mailing date of the rehearing decision.

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