

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-36898
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: May 8, 2012
County: Wayne-43 County

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 8, 2012, from Lansing, Michigan. Claimant personally appeared, with her sister, and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED]

ISSUE

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

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 December 20, 2011, Claimant applied for SDA.
- (2) On February 8, 2012, the Medical Review Team (MRT) denied Claimant's SDA application indicating Claimant did not have a physical or mental impairment that prevents employment of 90 days or more. (Department Exhibit A, pages 6-7).
- (3) On February 14, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On February 28, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 11, 2012, the State Hearing Review Team (SHRT) upheld the denial of SDA benefits indicating Claimant retains the residual functional capacity to perform a wide range of sedentary work and the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days. (Department Exhibit B, pages 1-2).
- (7) On July 27, 2012, the department submitted additional medical records on Claimant's behalf.
- (8) On July 30, 2012, Claimant's additional medical records were forwarded to SHRT for review.
- (9) On September 11, 2012, SHRT again denied Claimant's application indicating the nature and severity of Claimant's impairments would not preclude work activity at a simple unskilled level for 90 days. (Department Exhibit C, pages 1-2).
- (10) Claimant has a history of low back pain, asthma, hypertension and heart problems.
- (11) Claimant is a 39 year old woman whose birthday is [REDACTED] Claimant is 5'5" tall and weighs 350 lbs. Claimant completed high school and has worked as a cashier in fast food restaurants. Claimant last worked in December, 2009.
- (12) Claimant was appealing the denial of Social Security disability 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, Sec. 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).

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative 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 qualifies 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 disability due to low back pain, asthma, hypertension and heart problems.

On June 29, 2011, Claimant saw her primary care physician complaining of fatigue and easily becoming dyspneic on exertion. Her musculoskeletal examination revealed arthralgias with stiffness localized to one or more joints.

On September 12, 2011, Claimant followed up with her primary care physician regarding her hypertension. She stated she had been having occasional wheezing episodes and complained of urinary frequency over the past week. She was assessed with recent weight gain, cardiomegaly, hypertension, asthma and lumbago. She was instructed to return in 2 months.

On November 14, 2011, Claimant saw her primary care physician complaining of chest pains. She was diagnosed with cardiomegaly and hypertension and instructed to follow-up in two months.

On January 18, 2012, Claimant saw her treating physician for a sore throat. During the exam it was noted Claimant had poor hygiene, with white plaques over her scalp and body. She was assessed with a sore throat, seborrhea and systolic and diastolic elevation was observed.

On January 27, 2012, Claimant's treating physician completed a medical examination on behalf of the department. Claimant was diagnosed with hypertension, cardiomegaly, chronic lumbar pain, obesity, asthma and complaints of dyspnea on exertion and intermittent wheezing episodes. Claimant was easily fatigued. Her respiratory exam showed good air exchange. The treating physician opined that Claimant was stable and able to meet her own needs in the home.

On April 20, 2012, Claimant saw her primary care physician complaining of a visual disturbance for the past 3 months. On examination, Claimant was assessed with subjective visual disturbances, seborrhea and combined systolic and diastolic elevation was observed.

On June 20, 2012, Claimant's 2-D echocardiogram showed the left ventricle had a normal chamber size and mildly increased wall thickness with normal systolic contractile performance. The mitral valve revealed normal coaptation with normal mobility. The ejection fraction was 60% and she was diagnosed with diastolic dysfunction. Her shortness of breath was opined to be due to obesity.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that she had low back pain, asthma, and hypertension and heart problems. Based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria 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 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.

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**.

/s/

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

Date Signed: September 24, 2012

Date Mailed: September 25, 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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