

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-4301
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 27, 2012
County: Wayne (82-15)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was conducted on January 19, 2012, and February 27, 2012. Claimant appeared and testified. Claimant was represented by [REDACTED]. The Department of Human Services (Department) was represented by [REDACTED].

ISSUE

Did the Department properly determine that Claimant is not disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as material fact:

1. On April 7, 2011, Claimant filed an application for MA and SDA benefits. The application requested MA retroactive to January 1, 2011.
2. On June 20, 2011, the Department denied Claimant's application for benefits based on a finding that Claimant did not meet the requisite disability criteria.
3. On July 18, 2011, Claimant filed a hearing request to protest the Department's determination.
4. Claimant, age forty-three [REDACTED] has an eleventh-grade education.

5. Claimant last worked in 2009 as a waitress and a dancer. Claimant's relevant work history consists exclusively of unskilled medium-exertional work activities.
6. Claimant has a history of carpal tunnel syndrome and arthritis in both knees, dating from at least [REDACTED], although Claimant recalls experiencing pain in [REDACTED]
7. Claimant was hospitalized in [REDACTED] for a total right knee replacement (arthroplasty).
8. Claimant currently suffers from bursitis in both hips and arthritis in both knees.
9. Claimant has severe limitations in her ability to sit, stand and walk, she has sleep difficulties, and she elevates and ices both legs six times a day for one-half hour at a time. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA 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 Reference Tables (RFT).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

Federal regulations require the Department to use the same definition for "disabled" as the U.S. Social Security Administration uses for Supplemental Security Income (SSI) benefits applications under Title XVI of the U.S. Social Security Act. 42 CFR 435.540(a).

"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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a five-step sequential evaluation process by which current work activity (Step 1), the severity of the impairment(s) (Steps 2 and 3), current physical and mental impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) (Steps 4 and 5) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, no evaluation under a subsequent step is necessary.

Turning now to the required five-step evaluation, Step 1 requires the trier of fact to determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Claimant is unemployed. Therefore, Claimant is not disqualified from eligibility for MA at Step 1 of the sequential evaluation process.

Second, Step 2 requires that in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means 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 purpose of Step 2 in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may screen out at this level only those claims which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimis* hurdle" in the disability determination. The *de minimis* standard is a provision of law that allows the court to disregard trifling matters.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that she has significant physical limitations of her ability to perform basic work activities such as walking, sitting, and standing, and she requires numerous opportunities to elevate and ice her legs every day. Medical evidence clearly establishes that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

As Claimant meets the severity requirement of Step 2, the trier of fact must next consider Step 3 of the sequential consideration of a disability claim. In Step 3 of the

sequential consideration of a disability claim, 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-Listing of Impairments. This Administrative Law Judge finds that the Claimant's medical record supports a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant is found disabled based upon the medical evidence alone. 20 CFR 416.920(d).

It is found and determined that Claimant's lower extremity impairments meet the requirements of Listing 1.02, Major dysfunction of a joint(s) (due to any cause):

Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and finding on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b...

This determination is supported first by the medical records in evidence in this case. Claimant treated with [REDACTED] since July 15, 2009. She had a total right knee replacement and had three sets of bilateral cortisone injections in *both* knees *after* the right knee was replaced. X-rays showed significant joint space narrowing in the medial compartments of her left and right knees. Claimant anticipates a total left knee replacement will be necessary. [REDACTED] recommends elevated legs and frequent rest periods.

[REDACTED] restricts Claimant to lifting no more than ten lbs. Claimant is restricted to four hours sitting, one hour standing and one hour of walking in an eight-hour work day; but, overall, she is "unable to perform the above functions consistently for prolonged periods without having to take an unreasonable number and length of rest periods." [REDACTED] functional restrictions for Claimant are no stooping and crouching, and only occasional climbing, balancing, kneeling, bending, crawling, and pushing and pulling. [REDACTED] stated Claimant is not able to work at her previous occupation and she also is unable to work at any full-time occupation.

In addition, Claimant's credible and un rebutted testimony is that she uses a cane when she goes out visiting friends and family. She takes Vicodin for the pain in her legs as well as for the bilateral hip bursitis she is experiencing. She testified that she cannot do the things she used to do, and she needs help with everything all the time.

Based on the above findings that Claimant is eligible for MA disability benefits because of her medical impairment described above, it is not necessary for the undersigned to undertake further inquiry into Claimant's employability (i.e., Steps 4 and 5 of the sequential evaluation process).

In conclusion, the Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. The Department's denial of MA benefits to Claimant is REVERSED.

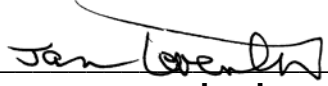
Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found disabled for purposes of MA, she must also be found disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that Claimant meets the definition of medically disabled under the Medical Assistance and SDA programs as of July 15, 2009.

The Department is ordered to do the following within ten days of the issuance of this Decision and Order:

1. Initiate a review of Claimant's April 7, 2011 application, if it has not already done so, to determine if all nonmedical eligibility criteria for MA, MA-retroactive and SDA benefits have been met;
2. Initiate procedures to inform Claimant and her Authorized Hearing Representative of its determination in writing, and provide MA, MA retroactive, and SDA benefits to Claimant at the benefit levels to which she is entitled;
3. Assuming that Claimant is eligible for program benefits, initiate procedures to review Claimant's continuing eligibility for program benefits in May 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 17, 2012

Date Mailed: April 17, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JL/pf

cc:

