

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-48359
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: July 9, 2012
County: Wayne (82-15)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on July 9, 2012, by teleconference from Detroit, Michigan. Participants on behalf of claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Was the denial of claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA) benefits for lack of disability correct?

FINDINGS OF FACT

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

1. Claimant applied for MA-P and SDA on January 5, 2012.
2. Claimant is 48 years old.
3. Claimant has a 12th grade education.
4. Claimant is not currently working.
5. Claimant has a prior work history consisting of telemarketer, cashier, supermarket demonstrator, maintenance, and file clerk.

6. The telemarketer position and one of the file clerk positions were performed at the sedentary level.
7. Claimant's job responsibilities as a telemarketer involved speaking on the phone and sitting for extended periods.
8. There was no particular standing or lifting requirements of this job.
9. Claimant did not testify to any mental limitations with regard to work-related activities in this particular job.
10. Claimant stated that the reason she could not perform this job is because her carpal tunnel syndrome prevented her from holding a phone.
11. Claimant alleges disability due to degenerative joint disease, arthritis, hypertension, hypercholesterolemia, GERD, carpal tunnel syndrome, depression, fibromyalgia, and gout.
12. Claimant has had surgery to correct the carpal tunnel syndrome.
13. Claimant does not require braces for CTS.
14. Medical reports note minimal degenerative changes in the pelvis, minimal narrowing in the L5-S1 spine, and normal bone scans.
15. While a treating source stated that claimant could not even perform sedentary tasks, at an independent examination, claimant was able to get on and off the exam table, had normal gait, strength, tone, and sensory muscles, had no evidence of atrophy or weakness, and had a full range of motion with the exception of a minimal reduction in the knees and ankles.
16. There is no submitted medical evidence of carpal tunnel syndrome.
17. An independent examination noted that grip strength was normal.
18. Claimant alleged sitting restrictions, can walk short distances, and can stand for 10 minutes at a time.
19. Claimant testified that she could lift up to ten pounds.
20. Claimant also alleges depression.
21. A mental status exam found an adjustment disorder with a GAF of 60, and found that claimant is able to understand and follow simple directions.
22. The exam also found claimant capable of performing simple, routine tasks.

23. On April 3, 2012, the Medical Review Team denied MA-P and SDA, stating that claimant could perform other work.
24. On April 5, 2012, claimant was sent a notice of case action.
25. On April 11, 2012, claimant filed for hearing.
26. On June 6, 2012, the State Hearing Review Team (SHRT) denied MA-P and SDA, stating that claimant could perform other work.
27. On July 9, 2012, a hearing was held before the Administrative Law Judge.

CONCLUSIONS OF LAW

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 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 Bridges Reference Manual (BRM).

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 BAM, BEM and BRM.

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

Disability is defined as the inability to do any substantial gainful activity (SGA) 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.

This is determined by a five-step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five-step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps is necessary. 20 CFR 416.920.

The first step that must be considered is whether the claimant is still partaking in SGA. 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-

related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2012 is \$1,690. For non-blind individuals, the monthly SGA amount for 2012 is \$1,010.

In the current case, claimant has testified she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that claimant is not engaging in SGA and, thus, passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "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 the second step 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 only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of degenerative joint disease, arthritis, fibromyalgia, and pain. These conditions meet the durational requirement. Claimant, therefore, passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either the claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 1.00 (Musculoskeletal), Section 12.00 (Mental) and Section 14.00 (Immune). Claimant's condition does not meet the requirements contained in the listings. Claimant does not have nerve impairment, constitutional deficiencies, or symptoms that would qualify for the A part of listing 12.04, as defined by these listings. The medical evidence is insufficient to consider these listings. Therefore, claimant cannot be found to be disabled at this step based upon medical evidence alone. 20 CFR 416.920(d). We must, thus, proceed to the next steps and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether he can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) The individual has the functional and vocational capacity for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA.

SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is

made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work-related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional nor nonexertional limitations; however, such symptoms can often affect the capacity to perform activities as contemplated above and, thus, can cause exertional or nonexertional limitations. SSR 96-8.

Claimant alleges a disabling impairment with regard to degenerative joint disease, arthritis, fibromyalgia, depression and pain. While claimant's treating source lists physical restrictions, including widespread weakness and atrophy, these limitations were not confirmed in an independent exam and are not supported by any other part of the medical record. The medical record found minimal narrowing in the spinal column and minimal degenerative changes. Claimant's hand strength was normal. Sensory, motor strength and reflexes were all normal. Range of motion was normal. Therefore, while the Administrative Law Judge finds the treating source credible with regard to diagnoses, the opinion on functional limitation is simply not credible or supported by any part of the medical record.

Furthermore, while claimant alleges a disabling impairment with regard to carpal tunnel syndrome, claimant's own treating source does not list CTS, nor are any restrictions given with regard to CTS. Claimant does not wear braces for CTS, and by claimant's own testimony, claimant has already had corrective surgery with regard to CTS. The Administrative Law Judge cannot, therefore, give any credibility to claimant's CTS contention, as it is not contained in the medical record.

While claimant does, indeed, have definite symptoms and diagnoses of fibromyalgia, there are no specific limitations in the medical record, especially given that the objective reports do not contain particular functional limitations.

However, claimant does complain of fatigue, generalized difficulties in standing, walking and lifting, and takes medications that would support these contentions. Medical records do support symptoms of generalized weakness, support the use of a cane, and indicate that claimant does have pain from standing and walking.

With regards to claimant's depression, a mental status exam does not list any particular mental limitations, except for perhaps complex tasks. None of claimant's prior relevant work would fall into this category. Furthermore, a GAF of 60 is indicative of only a mild impairment at best.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering functions that require lifting of heavy weights and extreme physical exertion that could exacerbate pain. Claimant has some limitations with reaching and pulling, especially when significant weight is involved, but has no other manipulative limitations. Claimant has some postural limitations (e.g., stooping, bending, and crouching) and no visual limitations or communicative (hearing, speaking) limitations. Claimant has some limitations with standing, walking, or the use of her legs. Claimant has no limitations on sitting, as long as she can stretch as needed. The medical record does not support any limitations with regards to the use of her hands. Claimant has no mental limitations, except for perhaps complex tasks.

Claimant's PRW includes work as a telemarketer. This job, as typically performed and described by the claimant, required talking on the phone and sitting for extended periods. This job did not require heavy lifting, and there was no testimony that this job required physical exertion as such might cause claimant to experience fatigue or fibromyalgia symptoms. There was no testimony as to whether this job required any reaching or pulling, bending or stooping.

Claimant's medical record as a whole does not show that claimant has a physical impairment that would prevent her from performing her past work. Even giving claimant the benefit of the doubt with regard to her testimony, a sedentary job such as this one would not be significantly impaired by symptoms that claimant expressed.

The medical record shows that claimant is physically and mentally capable of performing her past relevant work. Therefore, claimant possesses the RFC to perform her prior relevant work.

Therefore, given the functional requirements for these jobs as stated by claimant (which is consistent with how these jobs are typically performed) and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does retain the capacity to perform her past relevant work.

As claimant retains the capacity to perform past relevant work, the undersigned must find that claimant does not meet the requirements to be found medically disabled. As claimant does not meet the requirements to be found medically disabled, the undersigned holds that the Department was correct when determining that claimant was not disabled for the purposes of the MA-P and SDA programs.

As claimant has been found not disabled at Step 4, no further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not disabled for the purposes of the MA-P and SDA programs. Therefore, the decision to deny claimant's application for MA-P and SDA was correct.

Accordingly, the Department's decision in the above-stated matter is, hereby, **AFFIRMED**.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 7, 2012

Date Mailed: August 7, 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

RJC/pf

cc:

