

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-52260
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: August 15, 2012
County: St. Clair

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in person hearing was held on August 15, 2012, from Port Huron, Michigan. Participants on behalf of Claimant included Claimant, her daughter, [REDACTED], and her mother-in-law, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the State Disability Assistance (SDA) program?

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 February 1, 2012, Claimant applied for SDA.
2. On April 3, 2012, the Medical Review Team denied Claimant's request.
3. On May 10, 2012, Claimant submitted to the Department a request for hearing.
4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 42 years old.
6. Claimant completed education through high school and 2 years of college.

7. Claimant has employment experience (last worked January 11, 2012) as kitchen help for a high school cafeteria, a cashier and stockperson, in retail management for [REDACTED] and a pharmacy technician for [REDACTED].
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from congestive heart failure, diabetes, lower extremity neuropathy, fibromyalgia and rheumatoid arthritis.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

CONCLUSIONS OF LAW

The SDA program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The 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 RFT.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

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 exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, disability is defined as:

...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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

Social Security Ruling (SSR) 99-2p; [SSR 99-2p (4/30/99)]; restates policy of the Social Security Administration for claims of disability based on Chronic Fatigue Syndrome (CFS). SSR 99-2p: Footnote (3) provides:

There is a considerable overlap of symptoms between CFS and Fibromyalgia Syndrome (FMS), but individuals with CFS who have tender points have a medically determinable impairment. Individuals with impairments that fulfill the American College of Rheumatology criteria for FMS (which includes a minimum number of tender points) may also fulfill the criteria for CFS. However, individuals with CFS who do not have the specified number of tender points to establish, will still be found to have a medically determinable impairment.

The medical record establishes that, in addition to the diagnosis of chronic fibromyalgia for over twelve months, claimant has the chronic fibromyalgia-related impairment of depression.

Claimant testified to the following symptoms and abilities: pain and swelling in all joints, tightness in chest, tired and fatigued all the time, right knee gives out, uses a cane for all walking due to leg giving out, right handed, right hand is deformed and swells a lot, struggles to hold pens and pencils, struggles with buttoning shirts, zippers and tying shoes, left grip better than right, wears a brace on her left for her carpal tunnel syndrome, numbness in left hand, can walk 10 feet, can stand 5-10 minutes before knees hurt and she tires out, can sit an 2 hours, limited to lifting less than 5 lbs according to testimony, painful to bend and stoop, needs help with all household chores, needs help getting in and out of the tub, needs assistance with grocery shopping and not able to drive.

This Administrative Law Judge does take into account Claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet, in combination, the equivalent of listings 1.02 and 1.04 or their equivalent. Claimant's fibromyalgia surely impacts Claimant's documented disk herniation and probable radiculopathy. Claimant's treating physician clearly indicated that Claimant's condition was deteriorating and her rheumatoid arthritis involved multiple joints. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of a listing.

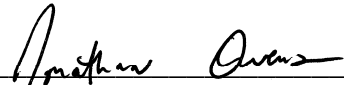
Therefore, Claimant is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of February 1, 2012.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated February 1, 2012, if not done

previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for November 2013.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 10, 2012

Date Mailed: October 10, 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

JWO/pf

cc:

