

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-52910
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: August 9, 2012
County: Ogemaw 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 August 9, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payment Supervisor [REDACTED]

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional 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 Services (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 Review Team (MRT) denied Claimant's application for SDA, indicating Claimant's alleged impairment lacked duration. (Department Exhibit B, pp 23-24).
- (3) On April 24, 2012, the department sent out notice to 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 Hearing Review Team (SHRT) upheld the denial of SDA benefits indicating Claimant retains the capacity to perform a wide range of simple, unskilled, light work. (Department Exhibit B).
- (6) Claimant has a history of post traumatic stress disorder, asthma, depression, arthritis, lumbar degenerative disc disease, bilateral neural foraminal narrowing at the L5-S1 level, radiculopathy, depression and anxiety.
- (7) Claimant is a 27 year old woman whose birthday is [REDACTED] Claimant is 5'5" tall and weighs 160 lbs. Claimant completed the ninth 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 Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 Mich Admin Code, Rules 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 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). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory 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, the 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 extent of his or her functional 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 five-step analysis requires the trier of fact to consider an individual's current work activity; 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 determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) 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 disabled, 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 individual's residual functional capacity is

assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has 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 individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual 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 individual'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. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, 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 individual'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 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 post traumatic stress disorder, asthma, depression, arthritis, lumbar degenerative disc disease, bilateral neural foraminal narrowing at the L5-S1 level, radiculopathy, depression and anxiety.

On November 18, 2010, x-rays of Claimant's lumbar spine identified no acute 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 were visualized. Bone density was within normal limits. No significant degenerative 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 the clinic for follow-up of her CT scan results. She had radicular symptoms for which lumbar spine x-rays were obtained on 11/18/10 at the emergency room and the studies were normal. Her pain progressed and a subsequent CT scan was obtained where she is noted to have circumferential disc osteophyte complexes at the L4-L5 and L5-S1 levels with bilateral lateral recess and bilateral neuroforaminal narrowing. It was suggested that if her radicular symptoms persisted, that an MRI of her lumbosacral spine be obtained. She continues to have chronic pain causing irritability and interferes with her activities of daily living. Her pain has intensified her depressive complaints which appear to be refractory to Elavil. She was agreeable to a trial of Prozac. There is subjective tenderness in the inferior lumbosacral spine without evidence of paraspinal spasm. No obvious scoliosis. 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 lumbosacral spine where she was found to have a moderate left eccentric broad based protrusion of L5-S1 with left-sided subarticular zone narrowing and moderate to severe bilateral neural foraminal narrowing. She discontinued Ultram, indicating it was ineffective for pain relief. She achieves minimal pain relief with the use of Vicodin and had voluntarily increased it. She was cautioned against the potential for dependency.

On February 20, 2012, Claimant was treated for low back pain and anxiety. Her physician expressed concerns about the addiction potential associated with analgesic and anxiolytic. She had an MRI which confirmed a left eccentric broad based protrusion of the L5 and S1 with moderate to severe bilateral neural foraminal narrowing. Her gait appeared to have improved from her 15 pound weight loss. Patellar reflexes were

diminished. Sitting root test was positive with pain referred into the midline lumbosacral spine. No muscle wasting in the lower extremities. No kyphosis or scoliosis. 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 diagnosed with degenerative disc disease with radiculopathy, 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 periods 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 present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that she had post traumatic stress disorder, asthma, depression, arthritis, lumbar degenerative disc disease with radiculopathy and depression. 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: October 31, 2012

Date Mailed: November 1, 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 mailing date of the rehearing decision.

VLA/las

cc:

