

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201258740
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: [REDACTED]
County DHS: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

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 [REDACTED]. The record was held open to allow Claimant an opportunity to submit new medical documentation.

ISSUE

Did the department properly determine that Claimant did not meet the disability standard for Medical Assistance based on disability (MA-P) and 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 [REDACTED] Claimant applied for MA-P, retro MA-P and SDA benefits.
2. On [REDACTED] the Medical Review Team (MRT) denied Claimant's request for MA-P and SDA benefits.
3. On [REDACTED] the department notified Claimant that she was denied MA-P and SDA benefits.
4. On [REDACTED] the department received Claimant's hearing request, protesting the denial of MA-P and SDA benefits, stating she has fibromyalgia, migraines, chronic back pain, and high blood pressure.

5. The State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits.
6. Claimant applied for disability benefits based on having back pain and migraines. (Department Exhibit A, p. 131)
7. According to an Emergency Room Report dated [REDACTED]: Claimant presented to the emergency room with a chief complaint of migraine headaches; Claimant was evaluated and given medication which resolved her symptoms; the doctor reiterated the importance of compliance with her antihypertensive agents as her hypertension was out of control; and Claimant was discharged in stable condition. (Department Exhibit A, pp. 75 & 76)
8. An MRI of Claimant's lumbar spine dated [REDACTED] revealed: mild degenerative changes in the lower lumbar spine; spondylitic defects at the lumbosacral level; and an otherwise essentially unremarkable examination with no findings of a nerve root impingement seen. (Department Exhibit A, p. 96)
9. According to an Emergency Room Report dated [REDACTED]: Claimant presented to the emergency room with a chief complaint of migraines; she has had a history of migraines since the age of 5; during her stay in the emergency department, she was given fluids and medication; and she was discharged home after having good resolution of her symptoms. (Department Exhibit A, p. 98)
10. According to an Emergency Room Report dated [REDACTED]; and [REDACTED]: Claimant presented to the emergency room with a chief complaint of migraine with history of migraines; she takes [REDACTED] daily, and usually [REDACTED] for pain; Claimant was given IV fluids and medication and was discharged home in stable condition after improvement in her headache; and Claimant was told to return if she had worsening of symptoms. (Department Exhibit A, p. 102)
11. Claimant submitted a Medical Examination Report, DHS-49, completed by her doctor on [REDACTED] which indicates: Claimant's physical examination was completely normal except Claimant had some tenderness in her lumbar spine and muscle spasms; there was weakness in her lower extremities 4/5; the medical doctor indicated that Claimant's disability is temporary, and that she is able to return to work on [REDACTED]. Claimant can lift up to 10 lbs frequently and 25 lbs occasionally; Claimant can stand and/or walk less than 2 hours in an 8-hour work day; Claimant does not need an assistive device for ambulation; Claimant does not have any limitations using her hands/arms for repetitive action, and she can use her left foot/leg for operating foot/leg controls; Claimant does

not have any mental limitations; and Claimant is able to meet her needs in the home. (Department Exhibit A, pp. 135 & 136)

12. According to a physical examination report dated [REDACTED] Claimant was seen for an evaluation of a rash in her lower back; Claimant had previously received trigger point injections; Claimant's musculoskeletal exam was normal; the examination of Claimant's spine revealed a normal gait and posture with no spinal deformity without tenderness, decreased range of motion or muscular spasm; and Claimant's neurological and psychiatric exam were normal. (Claimant Exhibit C)
13. According to a physical examination report dated [REDACTED] Claimant's musculoskeletal examination revealed tenderness and spasm in her right shoulder and cervical spine; Claimant's neurological exam was normal with normal strength and normal reflexes; and her psychiatric exam was normal. (Claimant Exhibit C)
14. According to a physical examination report dated [REDACTED] Claimant's musculoskeletal examination revealed: tenderness to palpation of the paraspinal musculature in the cervical region extending down into the lumbar region; tenderness of the bilateral trapezius muscles; tenderness in all of the focal points for fibromyalgia; there was no crepitus on movement of the shoulders, elbows, or knees; and deep tendon reflexes were 2+/4 and equal bilaterally at the knee and ankle. (Claimant Exhibit C)
15. Claimant is a 45 year old female who completed the 11th grade.
16. Claimant has unskilled work experience and was a certified nurse's assistant, but reported that she was not certified at any time relevant to this matter.
17. Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
18. Claimant submitted an application for disability benefits with the Social Security Administration (SSA).
19. SSA denied Claimant's application, and Claimant reported that she has an appeal pending with SSA.

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 of Human Services (DHS or 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 (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 Bridges Reference Manual (BRM).

Current legislative amendments to the Act delineate eligibility criteria as implemented by agency policy set forth in program manuals.

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:

(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.

"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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Since Claimant was not engaged in substantial gainful activity at any time relevant to this matter, the analysis continues.

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques....
20 CFR 416.927(a)(1).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) Symptoms are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) Laboratory findings are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

Claimant applied for disability benefits based on having back pain and migraines. Additionally, Claimant was diagnosed with fibromyalgia. The finding of a severe impairment at Step 2 is a *de minimus* standard. Based on the objective medical evidence on the record, Claimant established that she has a combination of chronic medical problems that meet the severity and duration standard for MA-P and SD A purposes. Therefore, the analysis continues.

Claimant failed to establish that she has a severe impairment that meets or equals a severe impairment listed at 20 CFR, Part 404, Subpart P, Appendix 1.

Claimant has at least an unskilled work history. Claimant failed to establish that she is unable to do all of her past relevant unskilled work.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Even if the analysis continued to the last step of the sequential evaluation, Claimant should be able to do at least sedentary or light work. Claimant has been prescribed medications for her migraine headaches. Each time she was seen in the emergency room for migraines, her physical examination was unremarkable, she was treated with medication, and she was released from the emergency department in stable condition.

An MRI of Claimant's lumbar spine dated [REDACTED], revealed: mild degenerative changes in the lower lumbar spine; spondylitic defects at the lumbosacral level; and an otherwise essentially unremarkable examination with no findings of a nerve root impingement seen. Claimant submitted a Medical Examination Report, DHS-49, completed by her doctor on [REDACTED], which indicates: Claimant's physical examination was completely normal except Claimant had some tenderness in her lumbar spine and muscle spasms; and there was weakness in her lower extremities 4/5; the medical doctor indicated that Claimant's disability is temporary, and that she is able to return to work on [REDACTED]. Claimant can lift up to 10 lbs frequently and 25 lbs occasionally; Claimant can stand and/or walk less than 2 hours in an 8-hour work day; Claimant does not need an assistive device for ambulation; Claimant does not have any limitations using her hands/arms for repetitive action, and she can use her left foot/leg for operating foot/leg controls. There was no objective medical evidence to support a finding that Claimant was unable to use both her feet/legs for operating foot/leg controls. According to a physical examination report dated [REDACTED] Claimant's musculoskeletal examination revealed: tenderness to palpation of the paraspinal musculature in the cervical region extending down into the lumbar region; tenderness of the bilateral trapezius muscles; tenderness in all of the focal points for fibromyalgia; there was no crepitus on movement of the shoulders, elbows, or knees; and deep tendon reflexes were 2+/4 and equal bilaterally at the knee and ankle.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Claimant is considered a younger individual with a limited educational background and unskilled work experience. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Using Medical Vocational Rules 201.18 and 202.17 as guidelines, Claimant would be considered not disabled. According to these Medical Vocational Rules, a younger individual with a limited educational background and unskilled work experience, limited to sedentary and light work, is not disabled.

In conclusion, Claimant does not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the department's MA-P and SDA decision is upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department properly determined that Claimant did not meet the MA-P and SDA disability standard.

Accordingly, the Department's MA-P and SDA decision is **AFFIRMED**.

/s/

Marya A. Nelson-Davis
Administrative Law Judge Manager
Michigan Administrative Hearing System
for Maura Corrigan, Director
Department of Human Services

Date Signed: 04/18/2013

Date Mailed: 04/18/2013

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 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.

MAND/kl

cc:

A large black rectangular redaction box covering several lines of text in the cc field.