

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-2553
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: January 9, 2013
County: Ingham

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon 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 January 9, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA), Retro-MA 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 March 7, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On September 28, 2012, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of past relevant work. SDA was denied due to lack of duration. (Department Exhibit A, pp 213-214).
- (3) On July 16, 2012, the department case worker sent Claimant notice that her application was denied.
- (4) On August 7, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On November 29, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled because the medical evidence of record indicates that Claimant is capable of light exertional tasks. SHRT also indicated that Claimant has a history of less than gainful employment, and as such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other occupations. (Department Exhibit B).
- (6) Claimant has a history of degenerative disc disease with radiculopathy, degenerative spondylolisthesis, chronic pain, and hypothyroidism.
- (7) On September 21, 2010, Claimant consulted with a neurosurgeon. A review of the reports and images from Claimant's CT scan of the spine and myelogram revealed a grade 1 spondylolisthesis of L5 on S1 with bilateral pars defects. There was associated bilateral recess stenosis with effacement and impingement of the exiting left L5 nerve root. The examining neurosurgeon diagnosed Claimant with degeneration of lumbar disc, lumbar radiculopathy, and degenerative spondylolisthesis. Surgical and non surgical treatment options were discussed at length. (Department Exhibit A, p 36).
- (8) On November 14, 2011, Claimant went to the emergency department complaining of back pain described as being in the area of the upper lumbar spine, left mid lumbar spine, mid lumbar spine, left lower spine, and lower lumbar spine. She also reported mild sensory loss involving the left foot and lower leg. She was administered Norflex, Dilaudid and Toradol. On examination, she had moderate muscle spasms of the right and left posterior back, and moderate vertebral point tenderness over the upper, mid and lower lumbar spine. Soft tissue tenderness is in the right upper and mid and left upper and mid thoracic area and right upper, mid and lower, left upper, mid and lower and upper, mid and lower central lumbar area. Straight leg raising was positive on the right at 30 degrees and positive on the left at 15 degrees. She was diagnosed with acute back pain with sciatica and acute left sided sciatica with sensory loss. She was counseled on her need for additional testing and follow-up and was discharged in stable condition with prescriptions for Vicodin, Ibuprofen and Valium. (Department Exhibit A, pp 194-204).
- (9) On December 1, 2011, Claimant was seen by her treating physician for left sciatica and severe low back pain. Claimant was restricted to no lifting, no bending, and no twisting torsion for six months. (Department Exhibit A, p 37).
- (10) On January 13, 2012, Claimant's treating physician wrote a letter supporting Claimant's application for disability. Her physician indicated that Claimant's history and physical support a diagnosis of lumbar disc herniation to the left. She indicated that Claimant is unable to sit, walk, stand or bend without considerable low back pain and left leg pain. A neurosurgery consultant on 9/21/ 2010 recommended that Claimant have

surgery for lumbar stenosis and spondy listhesis. Claimant has not had the surgery. Since early November, 2011, Claimant has noted burning, tingling, stabbing feelings in the low back with tingling and numbness going up her spine to her neck and decreased feeling in her left leg from buttock on down. A physical exam on 12/1/2011 showed right straight leg raising to 45 degrees caused left low back pain, left leg raising to 20-30 degrees caused left low back pain, and light touch sensation on the lower lateral left leg was decreased when compared to the right. Claimant was restricted to lifting no more than 5 pounds with indication she needed a repeat MRI and a referral to a neurosurgeon. (Department Exhibit A, pp 34-35).

- (11) On May 25, 2012, Claimant underwent a medical examination at the request of the department. Claimant reported chronic back pain for many years that had been worsening over time. She stated she had been recommended to have surgery in 2010, but she elected not to have it done as the surgeon did not believe it was urgent. She had had multiple treatments including various medications, physical therapy and injections, none of which had been significantly successful. On examination, she did have tenderness to minimal palpation and decreased range of motion, without evidence of radiculopathy. The examining physician indicated that he did not have any of Claimant's records to review. (Department Exhibit A, pp 8-10).
- (12) Claimant is a 34 year old woman whose birthday is [REDACTED] Claimant is 5'1" tall and weighs 174 lbs. Claimant completed high school.
- (13) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 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, Section 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.

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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c). If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are 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).

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

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. 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 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). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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).

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).

Based on Finding of Fact #6-#12 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, her spinal impairments meet or equal Listing 1.04(A) and 1.04(C):

1.04 ***Disorders of the Spine*** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine).

AND

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on an appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Based on Claimant's CT of the spine and myelogram showing an impingement of the nerve root, in addition to the emergency department's report and Claimant's treating physician's report, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA and SDA programs. Consequently, the department's denial of her March 7, 2012, MA/Retro-MA and SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's March 7, 2012, MA/Retro-MA/SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in January, 2014, unless her Social Security Administration disability status is approved by that time.
3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

/s/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 29, 2013

Date Mailed: January 29, 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 mailing 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

VLA/las

cc:

