

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

IN THE MATTER OF:

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████████████████████

Reg No: 20139913
Issue No: 2009, 4031
Case No: ██████████
Hearing Date: February 14, 2013
Iosco County DHS-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on February 14, 2013. Claimant appeared and testified. Claimant's Attorney, ██████████, of Legal Services of Northern Michigan, also appeared for the Claimant. The Department was represented by Linda Kennedy.

ISSUE

Did the Department properly deny Claimant's Medical Assistance and State Disability Assistance applications?

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 September 6, 2012, with a request for retroactive coverage back to June 2012.
2. The Medical Review Team denied the application on October 23, 2012.
3. Claimant filed a request for hearing on October 31, 2012, regarding the MA denial.
4. A telephone hearing was held on February 14, 2013.
5. On January 9, 2013, the State Hearing Review Team denied the application because the medical evidence of record indicates that the Claimant retains the capacity to perform light exertional tasks.

6. Claimant is 5' 11" tall and weighs 160 pounds, having lost 20 pounds in the last year.
7. Claimant is 33 years of age.
8. Claimant's impairments have been medically diagnosed as spinal fusion, mood disorder, personality disorder, and cervical cancer.
9. Claimant has the following symptoms: pain, fatigue.
10. Claimant completed a GED and some college courses.
11. Claimant is able to read, write, and perform basic math skills.
12. Claimant is not working. Claimant last worked in June 2012, as a food service worker.
13. Claimant lives with her father.
14. Claimant testified that she cannot perform some household chores.
15. Claimant takes the following prescribed medications:
 - a. Norco
 - b. Robaxin
16. Following hearing updated records were gathered and forwarded to the State Hearing Review. Claimant agreed to this and waived timeliness standards.
17. On June 13, 2013, the State Hearing Review Team, again, denied Claimant's appeal because the medical evidence of record indicates that the Claimant retains the capacity to perform a wide range of simple, unskilled, light work.
18. A Medical Examination Report completed following hearing by Claimant's neurosurgeon found that Claimant could do "no heavy lifting" and may sit, stand, walk as tolerated. Claimant's condition was also found to be improving.
19. An MRI report dated January 4, 2013, states the following under impression: "1. Satisfactory postoperative appearance at T12-L1 with internal fixation of the compressed comminuted L1 vertebral body fracture. No significant retropulsion seen. No significant thecal sac at the site of fracture. 2. The bone fragments of the L1 are not completely bone united.

A fracture of the vertebral body is still visualized on the axial imaging. 3. The rest of the lumbar spine is unremarkable.”

20. In a consultative physical examination report dated March 26, 2013 the examining physician stated the following under conclusions: “1. Lower back injury. The patient did have some subtle weakness in the left leg but there were no findings of spinal cord impingement. She also had some tenderness over the left chest wall area due to her surgery. She did have some paravertebral spasm which appeared to be compensatory. She had mild difficulty performing orthopedic maneuvers due to mild weakness in the left leg but her gait was stable. She is on antispasmodics and pain management. At this point continued supportive care and core exercise training would be helpful to avoid further deterioration but she is at risk for developing secondary spinal stenosis over time.”

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working, and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Claimant is not working therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe, which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listing 14.08 was considered.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a 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. 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 416.927.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The

trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a food service worker. Working as a food service worker as testified to by Claimant would be considered light work. The Claimant's impairments would not prevent her from doing past relevant work, because she is capable of performing work on the light exertional level. Therefore Claimant's appeal is denied at step 4. Claimant failed to present substantial medical evidence that she has a psychological impairment that is substantially limiting.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is not medically disabled for the purposes of the MA-P and SDA programs.

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



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 07/09/2013

Date Mailed: 07/09/2013

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 60 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.

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

AM/pw

cc: [REDACTED]
[REDACTED]
[REDACTED]
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