

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

IN THE MATTER OF:



Reg. No.: 201347351
Issue No.:
Case No.:
Hearing Date: October 2, 2013
County: Arenac

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on October 2, 2013, from Standish, Michigan. Participants on behalf of Claimant included and of as her authorized hearings representative. Participants on behalf of the Department of Human Services (Department) included . 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.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability 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 January 8, 2013, the Claimant submitted an application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits alleging disability.
2. On February 13, 2013, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) and State Disability Assistance (SDA) because it determined that the Claimant is capable of performing other work despite her non-exertional impairment.

3. On February 15, 2013, the Department sent the Claimant notice that it had denied the application for assistance.
4. On May 13, 2013, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
5. On June 23, 2013, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) and State Disability Assistance (SDA) benefits.
6. On November 12, 2013, after reviewing the additional medical records, the State Hearing Review Team (SHRT) again upheld the determination of the Medical Review Team (MRT) that the Claimant does not meet the disability standard.
7. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
8. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application and the Claimant reported that a SSI appeal is pending.
9. The Claimant is a 49-year-old woman whose birth date is [REDACTED].
10. Claimant is 5' 6" tall and weighs 180 pounds.
11. The Claimant is a high school graduate. The Claimant is able to read and write and does have basic math skills.
12. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
13. The Claimant has past relevant work experience as a waitress where she was required to stock material, serve food, take orders, greet customers, unload trucks, lift objects weighing as much as 75 pounds, and stand for up to 8 hours at a time, which is considered unskilled work.
14. The Claimant has the residual functional capacity to perform medium work.
15. The Claimant's disability claim is based on hypertension, diabetes, and depression.

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, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. 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. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The 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 BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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 Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 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 not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 49-year-old woman that is 5' 6" tall and weighs 180 pounds. The Claimant alleges disability due to hypertension, diabetes, and depression.

The objective medical evidence indicates the following:

The Claimant was admitted for inpatient treatment following an attempted suicide on November 27, 2012, and was discharged on December 7, 2012. On December 21, 2012, the Claimant's treating physician determined found her to have serious symptoms and serious impairments in social and occupational functioning. The Claimant has a history of heroin abuse. The Claimant's treating physician diagnosed her with

moderate and recurrent Major Depressive Disorder, and sustained Opioid Dependence that is in full remission.

Blood tests taken on September 27, 2012, determined that the Claimant's glycated hemoglobin (A1C) was 7.9.

A magnetic resonance imaging (MRI) scan of the Claimant's brain determined that her brain volume is age-appropriate, there is no evidence of acute ischemia, no evidence of a mass, or abnormal extra-axial fluid collections. The Claimant's treating physician found her brain to be stable from previous scans.

The Claimant experiences pain that is constant, severe, and is only relieved by taking Vicodin and a muscle relaxer three times each day.

A magnetic resonance imaging (MRI) scan shows mild degenerative spondylosis of the Claimant's lumbar spine. The Claimant's treating physician diagnosed her with sciatica.

The Claimant is capable of preparing meals, making beds, washing dishes, dusting, and sweeping. The Claimant enjoys using her computer on a daily basis. The Claimant is capable of showering and dressing herself without assistance.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months.

STEP 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.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The Claimant's impairment failed to meet the listing for hypertension under section 4.00 Cardiovascular because the objective medical evidence does not demonstrate a disabling effect on another body system. Hypertension generally causes disability

through its effects on other body systems and its limiting effects will be considered further when determining the Claimant's residual functional capacity.

The Claimant's impairment failed to meet the listing for diabetes under section 9.00 Endocrine Disorders because the objective medical evidence does not support a finding that her impairments meet or medically equal a listing in another body system. Blood tests taken on September 27, 2012, determined that the Claimant's glycated hemoglobin (A1C) was found to be 7.9. Diabetes generally causes disability through its effects on other body systems and its limiting effects will be considered further when determining the Claimant's residual functional capacity.

The Claimant's impairment failed to meet the listing for major depressive disorder under section 12.04 Affective disorders because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of his activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation or that he is unable to function outside a highly supportive living arrangement. The Claimant's treating physician diagnosed her with sustained Opioid Dependence that is in full remission. The Claimant's treating physician diagnosed her with moderate and recurrent Major Depressive Disorder. The Claimant was admitted for inpatient treatment following a suicide attempt on November 27, 2012. The Claimant was discharged on December 7, 2012, and on December 21, 2012, her treating physician found to her have serious symptoms and serious impairments in social and occupational functioning. The Claimant testified that she enjoys using a computer on a daily basis.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition,

the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do his past relevant work, the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

The Claimant submitted a report stemming from a consultative examination signed by a licensed physician on September 13, 2013. This consulting physician diagnosed the Claimant with numerous physical impairments not listed on Social Summary (DHS-49-B) that submitted with her application for Medical Assistance (M.A.). When applying for disability benefits, the Claimant reported to the Department that she was unable to work due to hypertension, diabetes, mental issues, and a suicide attempt. The impairments listed on the Claimant's Social Summary are consistent with the medical evidence submitted to the Medical Review Team (MRT).

However, the Residual Functional Capacity Questionnaire submitted by the Claimant at her hearing on October 2, 2013, is not consistent with the previously submitted medical evidence. The medical opinion of this consultative physician is inconsistent with the independent medical evidence reported by the Claimant's treating physicians and other hospital records.

This Administrative Law Judge is required to consider all relevant medical opinions that are made part of the hearing record regardless of their source. The weight placed on these opinions is based on the relationship between the source and the client (examining or treating), the length of that relationship, whether the opinion is supportable by medical signs and laboratory findings, and whether the opinion is consistent with other medical evidence. 20 CFT 416.927.

The medical opinion submitted by the Claimant following her hearing is found to be the result of a consultative examination. The opinions in this report are not supported by medical signs and laboratory findings, and are inconsistent with other medical evidence relied upon by the Medical Review Team (MRT). Therefore, this Administrative Law Judge has placed more weight on the opinions and reports of physicians that have treated the Claimant than the medical opinions listed in the September 13, 2013, functional capacity questionnaire.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform medium work as defined in 20 CFR 404.1567 and 416.967.

The Claimant has past relevant work experience as a waitress where she was required to stock material, serve food, take orders, greet customers, unload trucks, and lift objects weighing as much as 75 pounds. The Claimant's prior work required her to stand for up to 8 hours at a time. The Claimant's prior work as a waitress can be considered unskilled work. The Claimant's prior work as a waitress fits the description of heavy work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work in which she has engaged in, in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, she is not disabled. If the Claimant is not able to do other work and meets the duration requirement, she is disabled.

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. 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).

Medium work. 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. 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 objective medical evidence as a whole indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do less strenuous tasks if demanded of her. The Claimant's testimony as to her limitations indicates that she should be able to perform medium work despite her non-exertional impairments.

This Administrative Law Judge finds that the Claimant has been diagnosed with hypertension and diabetes, which are chronic and ongoing impairments. The objective medical evidence as a whole indicates that these impairments have not resulted in disabling impairments in other body systems and therefore do not prevent the Claimant from performing other less strenuous tasks if demanded of her.

The Claimant was able to answer all the questions at the hearing and was responsive to the questions. The Claimant was oriented to time, person and place during the hearing.

The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Claimant is 49-years-old, a younger person, under age 50, with a high school education, and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform medium work, and Medical Assistance (MA) and State Disability Assistance (SDA) is denied using Vocational Rule 20 CFR 203.21 as a guide.

The Department's Program 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. Department of Human Services Bridges Eligibility Manual (BEM) 261 (July 1, 2013), pp 1-8. Because the Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled not disabled for purposes of the Medical Assistance (M.A.) and State Disability Assistance (SDA) benefits.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED** REVERSED.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/27/2013

Date Mailed: 12/02/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be received in MAHS within 30 days of the date the hearing decision is mailed.

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The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

KS/sw

cc:

