

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-100
Issue No: 4031
Case No: [REDACTED]
Hearing Date: February 5, 2013
Wayne County DHS #49

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

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 Tuesday, February 5, 2013. Claimant appeared and provided testimony on her behalf.

The record was extended 90 days for a second SHRT review of additional medical reports (Claimant Exhibit 1).

ISSUE

Was disability, as defined below, medically established?

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's SDA application January 9, 2012 was denied on July 10, 2012 per BEM 261, with a hearing request on September 10, 2012.
2. Vocational factors: Age [REDACTED] with a high school or more education, and past 15 years of work experience as an unskilled telemarketer, cashier, and post-office clerk.
3. Claimant was last employed in 2009.
4. Claimant alleges disability due to arthritis, degenerative joint disease, degenerative disc disease, and hypertension. (DHS Exhibit A, Pg. 46).
5. Claimant's disabling symptoms are chronic pain throughout body; and lifting/carrying limited to 2-3 pounds.

6. Medical reports of exams state the claimant on:
 - a. May 7, 2012: Has *some* levoscoliosis in the thoracic spine area; that dexterity is *intact*; that gait slow but *okay*; that range of motion of the cervical spine is within normal limits; that range of motion of the lumbar spine is decreased; that hip joint movements are decreased on the right and left hip joint movement is within normal limits; that range of motion of all other joints is within normal limits; that straight leg raising is 45 degrees on the right and left in the supine position; that range of motion is normal for the cervical spine, lumbar spine, shoulders, elbows, hips, knees, ankles, wrists, hands-fingers; that she is able to sit, stand, bend, stoop, open door, make a fist, squat and arise from squatting, get on or off examining table, that she cannot walk on heels and toes in tandem; that gait is stable and within normal limits; that she does not need a walking aide(this is contrary to Claimant's testimony that a cane was prescribed by a physician); that she can sit, stand, or walk less than two hours in an eight hour work day; that she needs a job that permits shifting positions at will in sitting, standing, or walking; that when occasionally standing or walking, she needs the use a cane or other assistive device (this is inconsistent with the other evidence above); that she can occasionally lift less than 10 pounds (this is inconsistent with the Claimant testifying a limitation of 2-3 pounds); that she has a very mild degenerative change; that she is in no acute distress; that she has mild degenerative changes of the facets discs of L4-L5 and L5-S1; and that she has minimal disc space narrowing at L5-S1 and L4-L5. (DHS Exhibit A, Pgs. 13-27).
 - b. August 7, 2012: Is in no acute distress; that she has mild degenerative changes of the facets at L4-L5 and L5-S1; that she has minimal disc space narrowing at L5-S1 and L4-L5;
7. State Hearing Review Team decision dated November 15, 2012 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 46).

CONCLUSIONS OF LAW

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).

Facts above are undisputed.

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

When determining disability, the federal regulations, are used as a guideline and 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).

The claimant had the burden of proof to establish disability in accordance with steps 1-4 above... 20CFR 416.912 (a). The burden of proof shifts to the DHS at Step 5... 20CFR 416.960 (c)(2).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

Acceptable medical verification sources are licensed physicians, osteopaths, or certified psychologists ...20CFR 416.913(a)

...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).

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).

Step 1

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

The evidence of record established that the claimant has not engaged in substantial gainful activity since 2009. Therefore, the sequential evaluation is required to continue to the next step.

Step 2

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

Basic work activities. When we talk about basic work activities, we mean 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).

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

The medical reports of record are mostly examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, the medical reports do not establish whether the Claimant is impaired slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above.

The claimant's disabling symptoms (Findings of Fact #5) are inconsistent with the objective medical evidence of record (Findings of Fact #6).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

The medical reports of record states the claimant's examinations are normal (not abnormal or remarkable); that her condition is basically stable (not deteriorating); and that her impairments medically are minimal to moderate (not severe).

The Claimant has not sustained her burden of proof to establish a severe physical impairment in combination, instead of a non-severe impairment, for the required duration.

Therefore, the sequential evaluation is required to stop at Step 2.

Therefore, medical disability has not been established at Step 2 by the competent, material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides disability was not medically established.

Accordingly, SDA denial is **UPHELD** and so ORDERED.

/s/

William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 10, 2013

Date Mailed: May 13, 2013

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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.

WAS/hj

cc:

