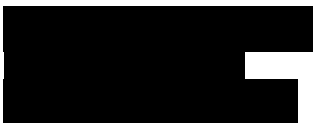


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2013-6723
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: March 12, 2013
County: Wayne-43

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 March 12, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

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. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On June 24, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA) benefits?

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 May 11, 2012, Claimant filed an application for MA-P, Retro-MA and SDA benefits alleging disability.
- (2) On September 17, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of past relevant work. SDA was denied due to lack of duration. (Depart Ex. A, pp 5-6).

- (3) On September 19, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On October 18, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On December 12, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform past skilled work. (Depart Ex B).
- (6) Claimant has a history of migraines, ulcers, arthritis, hepatitis A, carpal tunnel syndrome and depression.
- (7) Claimant is a 50 year old woman whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 156 lbs. Claimant completed the eleventh grade.
- (8) 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 Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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, Sec. 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.

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(a). 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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is

assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she has not worked since February, 2013. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally

groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to migraines, ulcers, arthritis, hepatitis A, carpal tunnel syndrome and depression.

On January 15, 2012, Claimant presented to the emergency department with a migraine headache. Claimant stated that she smokes 10 cigarettes daily as well as marijuana. She denied alcohol use. She was not currently taking any medications. Claimant was given 25 mg of IM Thorazine and 60 mg of IM Toradol in the emergency department. She was reassessed an hour later and her symptoms had completely resolved. She was instructed to follow-up with neurology in a week. She was discharged home in improved condition.

On February 10, 2012, Claimant went to the emergency department complaining of chronic headaches, although she did state she was not currently having a headache. She was found to have been mis-triaged, and should have gone to x-ray, as opposed to emergent x-ray. X-rays of Claimant's cervical spine were normal. The sinus series of x-rays showed mucosal thickening with bone thickening in the left maxillary sinus likely due to chronic sinusitis.

On May 21, 2012, Claimant underwent an Adult Mental Status Evaluation on behalf of the [REDACTED] Claimant was diagnosed with depression in 2012. She was taking 25 mg of Zoloff a day and indicated her compliance and the effectiveness of the medication was "good." She responded to questions and positive criticism well. She required no special assistance to complete the examination process. Overall, she was cooperative, motivated, verbally responsive and attempted all tasks, working diligently. Her eye contact was good. Her thoughts were logical, organized, simple and concrete and goal directed. The content of communication was age appropriate. Her mood was depressed. She did not appear to engage in any exaggeration or minimization of symptomology. Her affect was sullen, sad and tearing up. She had no difficulty comprehending and carrying out simple directions. She had no difficulty performing repetitive, routine and simple tasks. Diagnosis: Axis I: Depression, adjustment type; Axis IV: Economic, Claimant not working. Social support is poor. Relationships are fair. Judgment and insight are fair. Her activities of daily living are fair due to pain and homelessness; Axis V: GAF=62.

On May 21, 2012, Claimant's treating physician completed a Medical Examination Report on Claimant. Claimant was last seen on May 8, 2012. She was diagnosed with diabetes type 2, tension headaches, myalgia, muscle spasms, GERD, hyperlipidemia, depression and chronic sinusitis. She had no shortness of breath or asthma. She had chronic multiple joint pain and chronic headaches. Claimant's physician opined that Claimant's condition was stable.

On June 18, 2012, Claimant underwent an internal medicine evaluation on behalf of the Disability Determination Service. Claimant's chief complaints were arthritis, migraines, hepatitis, carpal tunnel syndrome, low back pain and depression. She was in no acute distress. Lumbar spine was straight and she had full range of motion. There was no upper extremity or lower extremity atrophy. She stood without difficulty and was able to get on and off the examination table without difficulty. She ambulated with a steady unassisted gait. The examining physician opined that Claimant does not have limitations which would interfere with her ability to perform her usual work duties.

On July 5, 2012, Claimant went to the emergency department complaining that her right hand hurts. She had full range of motion of the shoulder, elbow, wrist and fingers. There were no areas of erythema, induration, fluctuance or heat. No redness of the joints. There was positive tenderness along the wrist that radiated into the palmar aspect of the fourth finger. She was instructed to rest, apply ice and decrease use and given a Velcro wrist splint.

On July 15, 2012, Claimant presented to the emergency department with left shoulder and neck pain. She was diagnosed with an acute neck musculoskeletal spasm. There was tenderness with palpation over the left lateral trapezius muscle. She was discharged home in stable condition with prescriptions for Naprosyn and Valium.

On March 5, 2013, Claimant went to the emergency department complaining of left upper extremity weakness and sharp pain radiating into her left axilla. She was admitted to the observation unit. She also complained of pain in her left arm and had an MRI of her C-spine which showed minimal degenerative joint changes. She was evaluated by cardiology and her work up for ACS was negative with serial EKG and troponin. Her initial troponin was negative. She was diagnosed with a cervical sprain with paraspinal spasm, left arm pain, left axillary and left suprammary pain reproducible upon palpating. The physician opined it was likely from using several pillows underneath her neck while sleeping and odd posturing of her arm. She was started on Tylenol #3 for pain and Valium for spasms. EKG was normal. She was discharged home on March 6, 2013, in improved condition.

On March 22, 2013, Claimant followed up with her treating physician presenting with the belief that she had had a stroke. Claimant was seen in the emergency room for a syncopal episode. Claimant stated she was told she had a slight stroke. Claimant was unsure of what had happened. She stated she complained of shoulder pain and passed out. Her blood pressure was 130/78. She was alert and oriented to time, place and person. Her shoulders showed abnormalities. Muscle spasms of the shoulder. Motion, rotation and abduction of the shoulders was abnormal.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that she had depression and anxiety. Based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

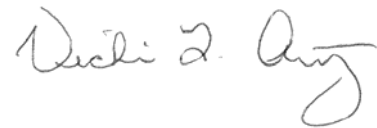
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P, Retro-MA and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



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

Date Signed: July 16, 2013

Date Mailed: July 16, 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:

