

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201354995
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 19, 2013
County: St. Clair County DHS

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 December 19, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], [REDACTED] of advomas as an authorized hearings representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], [REDACTED].

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?

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 February 25, 2013, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On April 2, 2013, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that her impairments did not meet the 12 months durational requirement.
3. On April 2, 2013, the Department sent the Claimant notice that it had denied the application for assistance.
4. On June 19, 2013, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On August 19, 2013, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits.
6. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
7. 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.
8. The Claimant is a 22-year-old woman whose birth date is July 30, 1990. Claimant is 5' 7" tall and weighs 150 pounds.
10. The Claimant has a high school equivalent education. The Claimant is able to read and write and does have basic math skills.
11. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
12. The Claimant has no past relevant work experience.
13. The Claimant's disability claim is based on androgen insensitivity syndrome, scoliosis, hypersensitive allergies, muscle fatigue, hyperglycemia, anxiety, and attention deficit hyperactivity disorder (ADHD).

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.

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 22-year-old woman that is 5' 7" tall and weighs 150 pounds. The Claimant alleges disability due to androgen insensitivity syndrome, vaginal cysts, scoliosis, hypersensitivity allergies, muscle fatigue, hyperglycemia, anxiety, and attention deficit hyperactivity disorder (ADHD).

The objective medical evidence indicates the following:

A treating physician diagnosed the Claimant with androgen insensitivity syndrome with congenital vaginal atrophy. The Claimant has a history of 22 vaginoplastic procedures and hormone replacement therapy.

A treating physician diagnosed with Claimant with a left Bartholin's cyst and left labial cellulitis. The Claimant was treated on an inpatient basis with surgical intervention under anesthesia and antibiotics from February 13, 2013, through February 17, 2013.

A treating physician diagnosed the Claimant with anxiety and attention deficit hyperactivity disorder (ADHD). A treating physician found the Claimant has serious symptoms and serious impairments in social and occupational functioning. A treating physician found the Claimant to have markedly limited abilities to understand and remember detailed instructions, carry out detailed instructions, maintain attention for extended periods, maintain a regular schedule, sustain an ordinary routine, complete a normal workday, and set realistic goals. A treating physician diagnosed the Claimant with severe depression.

The Claimant is not a licensed driver. The Claimant is capable of using a computer for an hour each day.

The Medical Review Team (MRT) made a determination that the Claimant suffers from a left Bartholin's cyst, an impairment not expected to result in death, or impair the Claimant's ability to work for 12 months.

This Administrative Law Judge finds that Claimant has been diagnosed with androgen insensitivity syndrome and that this is an underlying condition related to the Bartholin's cyst. That this condition is not likely to be resolved despite treatment. This Administrative Law Judge finds that the Claimant's ability to perform work has been diminished more than a minimal amount as a result of this impairment and other impairments stemming from this condition.

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 anxiety under section 12.06 Anxiety-related 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. The objective medical evidence does not demonstrate that the Claimant is completely unable to function outside her home.

The Claimant's impairment failed to meet the listing for depression and attention deficit hyperactivity 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 impairment failed to meet the listing for hyperglycemia under section 9.00 Endocrine because the objective medical evidence does not demonstrate that her hyperglycemia is so severe that it has caused an impairment of another body system that meets or equals another listed impairment. The Claimant's impairments due to hyperglycemia will be further examined under the fourth and, if necessary, the fifth steps of this sequential evaluation process.

The Claimant's impairment failed to meet a listing for hypersensitive allergies and muscle fatigue.

The Claimant's impairment failed to meet the listing for scoliosis under section 1.04 Disorders of the spine because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively.

The Claimant's impairment failed to meet the listing for androgen insensitivity syndrome under section 10.00 Multiple Body Systems because the objective medical evidence does not demonstrate an impairment that meets or equals a listing under another body system. Where an impairment does not meet or medically equal a listing, the Claimant may or may not have the residual functional capacity to engage in substantial gainful

activity. The Claimant's impairments due to complete androgen insensitivity syndrome will be evaluated under fourth , and if necessary, the fifth steps of the sequential evaluation process in §§404.1520 and 416.920 of this chapter.

Congenital disorders , such as congenital al anomalies, chromosomal disorders, dysmorphic syndromes, inborn metabolic syndromes, and perinatal infectious diseases, can cause deviation from, or interruption o f, the normal function of the body or can interfere with development. Examples of these disorders include both the juvenile and late-onset forms of Tay-Sachs disease, trisomy X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. For these disorders and other disorders like them , the degree of deviation, interruption, or interference, as well as the resulting functional limitations and their progression, may vary widely from person to person and may affect different body systems. There are many impairments that can cause deviation from, or interruption of, the normal function of the body or interfere with development; for example, congenital anomalies, chromosomal disorders, dysmorphic syndromes, metabolic disorders, and perinatal infectious diseases. In these impairments, the degree of deviation or interruption may vary widely from individual to individual. Therefore, the resulting functional limitations and the progression of those limitations also vary widely. For this reason, we evaluate the specific effects of these impairments on you under the listing criteria in any affected body system(s) on an individual case basis. Examples of such impairments include triple X syndrome (XXX syndrome), fragile X syndrome , phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. 20 CFR Part 404, Subpart P, Appendix 1.

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 testified that she worked as a telemarketer for a one month period and could not continue with this employment due to her impairments.

Federal regulations require that work experience applies toward the determination of whether a person is capable of performing work when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. Work experience that lasted for only brief periods of time during the last 15 years is not considered. 20 CFR 404.1565.

This Administrative Law Judge finds that the Claimant has no relevant past relevant work experience to be considered and there is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work substantially similar to work performed 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).

In determining whether physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, federal regulations require consideration of the combined effect of all a person's impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If a medically severe combination of impairments exists, the combined impact of the impairments will be considered throughout the disability determination process. 20 CFR 404.1523.

The term younger individual is used to denote an individual age 18 through 49. For individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including an adjustment to unskilled

sedentary work, even when the individuals are unable to communicate in English or are illiterate in English. Nevertheless, a decision of “disabled” may be appropriate for some individuals under age 45 who do not have the ability to perform a full range of sedentary work. However, the inability to perform a full range of sedentary work does not necessarily equate with a finding of “disabled.” Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual’s limitations or restrictions and the extent of the erosion of the occupational base. It requires an individualized determination that considers the impact of the limitations or restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education and work experience, including any transferable skills or education providing for direct entry into skilled work. 20 CFR 201.00(h).

In determining whether you are disabled, we consider all your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with the objective medical evidence, and other evidence. By objective medical evidence, we mean medical signs and laboratory findings as defined in § 416.928 (b) and (c). By other evidence, we mean the kinds of evidence described in §§ 416.912(b)(2) through (8) and 416.913(b)(1), (4), and (5), and (d). These include statements or reports from you, your treating or non-treating source, and others about your medical history, diagnosis, prescribed treatment, daily activities, efforts to work, and any other evidence showing how your impairment(s) and any related symptoms affect your ability to work (or, if you are a child, your functioning). We will consider all of your statements about your symptoms, such as pain, and any description you, your treating source or non-treating source, or other persons may provide about how the symptoms affect your activities of daily living and your ability to work. 20 CFR 416.929.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Claimant suffers from complete androgen insensitivity syndrome, a condition requiring treatment through vaginoplasty, and that this condition resulted in a severe infection, a Bartholin’s cyst, and left labial cellulitis requiring inpatient surgery under anesthesia. This Administrative Law Judge finds that this condition could reasonably be expected to produce the subjective symptoms, including pain, described by the Claimant during her testimony. The Claimant testified that her condition and the ensuing pain severely limit her ability to sit, stand, lie on her back, and limits her sleep to approximately 3 hours per day. The Claimant testified that her attempts to perform sedentary work tasks in the past were unsuccessful as a result of her current impairments.

The objective medical evidence and reports of the Claimant’s treating physician support a finding that the Claimant suffers from severe and ongoing pain. The Claimant sought treatment for an infection and left labial cellulitis. The Claimant’s treating physician reported that the severe pain the Claimant suffered from prevented treating her on an outpatient basis, and required inpatient surgery under anesthesia.

The objective medical evidence does not support a finding that any of the Claimant’s individual impairments prevent her from performing any work activity if considered separately.

However, this Administrative Law Judge finds the Claimant's anxiety with marked restrictions of her ability to perform vocational tasks, and the severe pain she suffers from and is likely to continue to suffer from as a result of androgen insensitivity syndrome, are a medically severe combination of impairments that limits the Claimant's residual functional capacity and prevent the Claimant from performing a wide range of sedentary work tasks. Based on the Claimant's limited residual functional capacity and inability to perform sedentary tasks, this Administrative Law Judge finds the Claimant to be unable to perform any work at this time.

Therefore, 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 for purposes of the Medical Assistance (M.A.).

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The department is **ORDERED** to initiate a review of the February 25, 2013, application for assistance to determine if all other non-medical eligibility criteria are met.
2. Provide the Claimant with a Notice of Case Action (DHS-16 05) describing the Department's revised eligibility determination.
3. A medical review should be scheduled for January of 2015.

/s/ _____
Kevin

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

Date Signed: January 8, 2014

Date Mailed: January 9, 2014

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.

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/hj

cc:

