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

IN THE MATTER OF:



Reg. No.: 20145065 Issue No.: 2009; 4009

Case No.:

Hearing Date: February 25, 2014

County: Wayne County DHS #17

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

Following Claimant's r equest for a hearing, this matter is before the undersigned Administrative Law J udge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 t o 431.250; and 45 CF R 205.10. After due notice, a telephon e hearing was held on February 25, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Participants on behalf of the Department of Human Services (Department) included

ISSUE

Did the Department of Hum an Services (Department) properly determine that the Claimant did not meet the di sability 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:

- On July 26, 2013, the Claimant submitted an application for Medica I Assistance (MA) and State Disability A ssistance (SDA) benefits alleging disability.
- On September 20, 2013, the Medical Review Team (MRT) determined that the Claimant did not meet t he disability standard for Medic al Assistance (MA-P) and State Disabilit y Assistance (SDA) because it determined that the Claimant is capable of performing past relevant work despite her impairments.
- 3. On September 25, 2013, the Department sent the Claimant notice that it had denied the application for assistance.
- 4. On October 7, 2013, the Depart ment received the Claimant's hearing request, protesting the denial of disability benefits.

- 5. On December 9, 2013, the Stat e Hearing Review Team (SHRT) upheld the Medical Rev iew Team's (MRT) deni al of Medical A ssistance (MA-P) and State Disability Assistance (SDA) benefits.
- 6. The Claim ant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
- 7. The Social Security Administrati on (SSA) denie d the Claimant's federal Supplemental Security Income (SSI) application and the Claimant reported that a SSI appeal is pending.
- 8. The Claim ant is a 42-year-old wom an whose birth date is
- 9. Claimant is 5' 2" tall and weighs 200 pounds.
- 10. The Claim ant is a high school graduate and was awar ded a bachelor's degree from college. The Claim ant is able to read and write and does have basic math skills.
- 11. The Claimant was not engaged in subst antial gainful activity at any time relevant to this matter.
- 12. The Claimant has past relevant work experience in an office environment where she was required to teach others, type, write, and develop lesson plans, which is considered skilled work.
- 13. The Claimant has the residual functional capacity to perform light work.
- 14. The Claim ant's disa bility claim is based on bilateral hig h ope n tibia I wedge osteotomy and obstructive sleep apnea.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michig an are found in the Mic higan 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 a ssistance 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 Medic al Assistance (MA) program is est ablished by the Title XIX of the Socia I 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 ass istance 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 policie s are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a ph ysical or menta I impairment, which meets federal Sup plemental Security Income (SSI) disab ility standards for at least ninety days. Rece ipt of SSI benefits based on disab ility or blindness, or the receipt of MA benefits based on disa bility 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 el igibility 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 im pairment which c an be expected to result in death or which has last ed 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 s everal considerations be analyzed in sequential order.

STEP 1

Does the client perform Substant ial Gainf ul Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whet her the Claimant is engaging in s ubstantial 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 i nvolves doing signif icant physic all or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gai nful work activity" is work that is usually done for pary 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 employ ment or self-employment above a specific level set out in the regulations, it is presumed that she has demons trated 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 regar dless 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 engage d in substantial gainful ac tivity 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 comb ination of impairments that is "severe" (20 CF R 404. I520(c) and 4I6.920(c)). An impai rment or combination of impairments is "severe" within the meaning of the regulations if it signific antly limits an individual's ability to perform basic work acti vities. An impairm ent or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abno rmalities that would have no more than a minimal effect on an individual 's ability to work (20 CF R 404.1521 and 416. 921. If the Claimant does not have a sev ere medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a s evere 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 Claim ant is a 42-year-old woman that is 5' 2" tall and weighs 200 pounds. The Claimant alleges disability due to bilate ral high open tibial wedge osteotomy and obstructive sleep apnea.

The objective medical evidence indicates the following:

The Claimant was diagnosed by a treating physic ian with mild o bstructive sleep apnea syndrome and poor sleep efficiency. The results of a sleep study determined that the Claimant has a sleep efficiency of 76%, and her Rapid Eye Movement (REM) sleep was measured at 24.3%.

The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, Claimant is found not to be disabled at this step. In order to conduct at horough evaluation of Claimant's disability assertion, the analysis will continue.

STEP 3

Does the impairment appear on a special listi ng of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings spec ified for the listed im pairment? If no, the analys is 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, S ubpart 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 requirem ent (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 sleep apnea under section 3.00 Respiratory impairments because the object ive medical ev idence does not support a

finding that the Claim ant suffers from chr onic sleep apnea. A treating phys ician found the Claimant's sleep apnea to be mild.

The Claimant's impairment failed to meet the listing for b ilateral high open tibial wedge osteotomy under section 1.02 Major dysfunction of a joint because the objective medical evidence does not demonstrate that the Claimant's impairm ent involves a weight bearing joint resulting in inability to ambulate effectively, or an impairment of an upper extremity resulting in inability to perform fine and gross movements effectively.

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 regula tions 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

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

Before considering step four of the sequent ial evaluation process, a deter mination is made of the Claim ant's residual functional capacity (20 CFR 404.1520(e) and 4l6.920(c)). An individual's residual functional capacity is his ability to do physical and mental work activities on a su stained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Claim ant's impairments, including impairments that are not severe (20 CFR 404. I520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is m ade on whether the Claimant has the residual function al capacity to perform the requirements of his past relevant work (20 CFR 404.I520(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 Claim ant 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.

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

The Claim ant has past relevant work experience in an office environment where she was required to teach others, type, write, and develop lesson plans. The Claimant 's prior work fits the description of light work. The Claimant's prior work is considered skilled work.

There is no evidenc e upon which this Administrative Law Judge could bas e a finding that the Claimant is unable to perform work substantially s imilar 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 Res idual F unctional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Append ix 2, Sections 200.00-204.00? If yes, client is not disabled.

At the las t step of the sequential ev aluation proc ess (20 CFR 404.15 20(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 class if jobs as sedentary, light, medium, and heav y. These terms have the same meaning as they have in the Dict ionary of Occupational Titles, publis hed 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 dock et files, ledgers, and small tools. Although a sedentary job is define d as one which involves sitting, a certain amount of walk ing and standing is often necessary in carrying out job duties. Jobs are sedentary if walk ing and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light wor k 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 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 light.

The Claimant's complaints of pain, while pr ofound 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 42-years-old, a younger person, under age 50, with a high school education and above, and a history of skilled work. Bas ed on the objective medical evidence of record Claimant has the residual functional capacity to perform light work, and Medica I Assistance (MA) and State Disability Assist ance (SDA) is denied using Vocational Rule 20 CFR 202.22 as a guide.

The Department's Program Elig ibility Manual contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disable diperson or age 65 or older. Despartment of Human Services Bridges Elig ibility 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 \square disabled \boxtimes not disabled for purposes of the Medical Ass istance (M.A.) and State Dis ability Assistance (SDA) benefits.

DECISION AND ORDER

Accordingly, the Department's determination	on is 🛛 AFFIRMED 🗌 REVERSED.
Kevin	Scully Administrative Law Judge for Maura D. Corrigan, Director Department of Human Services

Date Signed: March 5, 2014

Date Mailed: March 5, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the De cision and Order or, i f a ti mely 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 w rong 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 clai mant 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



