

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201364001
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: January 23, 2014
County: Macomb County DHS #12

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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, a telephone hearing was held on January 23, 2014. Claimant personally appeared and provided testimony and was represented by her attorney, [REDACTED]. Claimant's husband, [REDACTED], also appeared and provided testimony on Claimant's behalf. The Department of Human Services (Department) was represented by [REDACTED], an assistant attorney general with the Michigan Department of Attorney General, and [REDACTED] and [REDACTED], both of whom are eligibility specialists with the Department's Macomb County office. At Claimant's request, [REDACTED], a juvenile justice specialist with the Department's Macomb County office, provided Polish interpreter services for Claimant.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On April 21, 2014, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On February 25, 2013, Claimant submitted an application for public assistance seeking MA-P benefits and SDA benefits.
2. On July 12, 2013, the Medical Review Team (MRT) found Claimant not disabled. (Exhibit A, pp. 1-2)
3. On July 23, 2013, the Department notified Claimant of the MRT determination.
4. On August 16, 2013, the Department received Claimant's timely written request for hearing.
5. On October 14, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled. (Exhibit B, p. 1)
6. Claimant alleged physical disabling impairments due to neck and back pain.
7. Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, Claimant was 49 years old with a [REDACTED] birth date; was 5'3" in height; and weighed 125 pounds.
9. Claimant completed an associate's degree in bookkeeping and has no formal employment history

CONCLUSIONS OF LAW

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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Bridges Reference Tables (RFT).

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 416.913. 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 (i.e. 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 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 three to step four. 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 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).

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). An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b). Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972. Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a). Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not working therefore is not involved in substantial gainful activity. Accordingly, Claimant is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. Claimant 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 neck and back pain.

On August 25, 2011, an MRI of the cervical spine without contrast showed degenerative changes with disc/osteophyte complexes at C5-C6 and C6-C7, with it being most severe on the left at C5-C6 causing severe left neuroforaminal narrowing.

On August 25, 2011, an MRI of the lumbar spine without contrast showed the following: (i) moderate to severe degenerative changes with diffuse large disc bulging L5-S1 and mild degenerative changes to L4-L5; and (ii) cystic change poster to the S2 and S3 vertebral levels seen only on sagittal imaging, likely of benign etiology.

On March 29, 2012, Claimant underwent an L-Spine Lat which revealed moderately advanced discogenic disease with narrowing of the disc space height at C5 and C6 level, moderately severe narrowing of the left C6 neural foramen, and straightening and reversal of normal cervical lordosis with very little or no extension maneuver. Also shown was satisfactory excursion during flexion and no excursion during extension and an otherwise unremarkable examination of lumbar spine.

On April 9, 2013, Claimant underwent neck surgery.

On May 17, 2013, Claimant was seen by [REDACTED] for an internal medicine report following Claimant's complaints of chronic low back pain following recent surgery. Examination showed that Claimant's handgrip was weak bilaterally but her digital dexterity was intact. Claimant could not get on the examining table due to pain in the neck and back and her gait was slow. She was able to do tandem, tiptoe and heel walking very slowly but could only bend and stoop 30%. She was able to squat 45%. The range of motion of multiple joints was decreased however the range of motion of the cervical spine was not assessed due to recent surgery. Final impressions included chronic persistent neck pain with bilateral radiculopathy and a range of motion of the

201364001/SDS

neck of zero at present time, and chronic low back pain with left radiculopathy and a decreased range of motion of the lumbar spine.

On October 19, 2013, Claimant underwent an MRI of the brain with and without contrast which showed Chiari I malformation with downward herniation of the brainstem and cerebellar tonsils by a distance of about 6.5 mm below the foramen magnum. The rest of the examination of the brain was unremarkable.

On October 19, 2013, Claimant underwent an MRI of the cervical spine, which showed postsurgical changes of anterior cervical discectomy and fusion extending from C5 to C7 level with placement of disc spacer device. There is stable appearance of spinal fusion and straightening of the normal cervical lordosis due to spinal fusion. Impressions were as follows: (i) status post ACDF from C5 to C7 level, stable and unchanged; (ii) minimal changes of Chiari I malformation with downward herniation of cerebellar tonsils, stable and unchanged; (iii) no midline disc herniation or cord compression and no evidence of spinal stenosis; and (iv) unchanged appearance of moderate narrowing of the left C6 neural foramen and mild right lateral herniation of disc at C6-C7 in the mouth of the right C7 neural foramen with narrowing of the neural foramen.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, continuously for a period of twelve months or longer; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of neck and back pain with some degenerative changes.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A. Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means

an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1). Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2). They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4. The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.* The inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities. 1.00 B2c. In other words, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c. To use the upper extremities effectively, an individual must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. 1.00B2c. Examples include the inability to prepare a simple meal, feed oneself, take care of personal hygiene, sort/handle papers/files, or place items in a cabinet at or about the waist level. 1.00B2c. Pain or other symptoms are also considered. 1.00B2d.

In this case, the evidence shows that, despite Claimant's complaints of neck and back pain, there is stable appearance of spinal fusion and straightening of the normal cervical lordosis due to spinal fusion and no evidence for spinal stenosis or spinal compression fracture or midline disc herniation or any neurological abnormalities. Additionally, the evidence shows an unchanged appearance of moderate narrowing of the left C6 neural foramen and only mild right lateral herniation of disc at C6-C7. The evidence shows that Claimant is able to ambulate without the use of a hand-held assistive device, and has full digital dexterity in her hands. And, while the range of motion of multiple joints was decreased in May 2013 immediately following an April 2013 surgery, no more recent range of motion assessment of the cervical spine or multiple joints was performed following Claimant's post-surgery recovery period. Moreover, Claimant testified that she able to drive a vehicle, walk short distances, and lift/carry up to 10 pounds. While Claimant was unable to testify regarding how long she was able to comfortably sit without adjustment, she did not shift uncomfortably during the 90 minute hearing in this matter. Claimant further testified that is able to perform light housework, prepare meals, and shop for groceries, with assistance from her husband. Claimant further testified that, but for her lack of fluency in the English language, she would be

201364001/SDS

able to perform a desk job. In summary, although the objective medical records establish physical impairments, these records in conjunction with Claimant's testimony establish that Claimant's impairments do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant is found not disabled at Step 3 with no further analysis required.

The State Disability Assistance 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 SSI disability standards for at least ninety days. Receipt of SSI or RSDI 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.

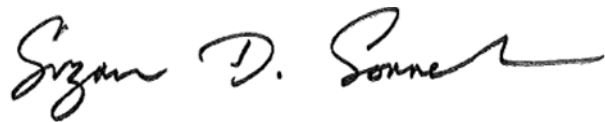
In this case, Claimant is found not disabled for purposes of the MA-P program; therefore, she is found not disabled for purposes of SDA benefit program.

DECISION AND ORDER

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

Accordingly, It is ORDERED:

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



Suzanne D. Sonneborn
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed:04/23/2014

Date Mailed:04/24/2014

201364001/SDS

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

SDS/hj

cc:

