STATE OF MICHIGAN

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

IN THE MATTER OF:

Reg. No.: 201363416
Issue No.: 2009; 4009
Case No.:
Hearing Date: January 16, 2014
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 16, 2014 from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included , Medical Contact Worker.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional records. The records were received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On March 25, 2014, this office received the SHRT determination which found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) benefit 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 January 31, 2013, Claimant submitted an application for public assistance seeking MA-P and SDA benefits.

2. On April 10, 2013, the Medical Review Team (MRT) found Claimant not disabled.

3. On April 12, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.

4. On June 17, 2013, the Department received Claimant's timely written request for hearing.

5. On October 2, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled.

6. Claimant alleged physical disabling impairment due to chronic back pain.

7. At the time of hearing, Claimant was [redacted] years old with a [redacted], birth date; she was [redacted] in height and weighed [redacted] pounds.

8. Claimant is a high school graduate and has an employment history of work as a security guard at a water park and personal care assistance to residents at a group home for mentally ill.

9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program purusant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

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

A disabled individual is eligible for MA-P and SDA benefits. BEM 105 (January 2014), p. 1; BEM 260 (July 260); BEM 261 (July 2013), p. 1. In order to receive MA benefits

based upon disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act. 20 CFR 416.901. 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).

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 (1) whether the individual is engaged in substantial gainful activity (SGA); (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to 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)

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, ability to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 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(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is substantial gainful activity (SGA), then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under step 1 and the analysis continues to step 2.

Step Two

Under step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement states that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922. 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 416.920(a)(4)(ii); 20 CFR 416.920(c). 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); see also *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985).

Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. CFR 416.921(b).

At the second step, the individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *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).

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 alleges physical disability due to chronic back pain.

On November 27, 2012, Claimant went to the hospital emergency department complaining of back pain. She was diagnosed with acute chronic muscle spasms and back pain. She was discharged in stable condition, with prescriptions for Motrin, Vicodin and valium.

Claimant was admitted to the hospital on January 8, 2013, complaining of back pain that radiated down the back of both legs to mid-thigh that made her unable to walk. Claimant denied any numbness or tingling sensation or fecal or urinary incontinence. An MRI of the lumbar spine was ordered. The MRI showed no acute fracture or compression deformity or spondylolisthesis. However, there was disc desiccation at L3-L4 and L4-L5. Mild disc bulge with a central disc protrusion at L4-L5 causing mild spinal canal and neural foramen narrowing at this level was shown. Claimant was diagnosed with lumbar back pain secondary to mild disk bulge and central disk protrusion of L4-L5, with a secondary diagnosis of radiculopathy. At discharge, Claimant's condition was fair and her prognosis was fair but it was noted that Claimant would need additional follow-up care.

Although Claimant was referred to physical therapy following the January 2013 admission, she was unable to participate in the recommended treatment because of lack of medical insurance.

In a Medical Examination Report completed by Claimant's treating physician, with a specialty in orthopedic spine surgery at a hospital orthopedic clinic, and submitted to the Department on March 1, 2013, the doctor diagnosed Claimant with degenerative disc disease of the lumbar spine. The doctor indicated that Claimant's right straight leg raise was 30 degrees and her left leg raise was 40 degrees. He limited her to lifting occasionally less than 10 pounds; standing and/or walking less than 2 hours in an 8-hour workday; sitting less than 6 hours in an 8-hour workday; and using neither leg for operating foot/leg controls.

On May 10, 2013, Claimant's doctor reviewed the January 2013 MRI, noting that it revealed a central disc protrusion and L4-L5 with diffuse degenerative disc bulge at L3-L4, and performed a physical exam. In the exam, the doctor noted that (i) Claimant walked and stood with a leaning forward attitude; (ii) there was tenderness in the lumbar spine; (iii) Claimant's bilateral straight leg raise test was positive at 30 degrees; (iv) her sensation was intact in the lower extremities; and (v) she had bilateral lower extremity strength at grade 4/5, possibly due to increased pain. The doctor recommended physical therapy and possibly epidural injections and, if neither treatment worked, surgery. Claimant's doctor also completed a May 10, 2013 medical statement limiting Claimant to no bending, no lifting greater than 10 pounds, and no prolonged sitting or standing.

On January 24, 2014, Claimant's treating physician completed another medical examination report, DHS-49, indicating that Claimant's condition was deteriorating. The report noted that Claimant could (i) occasionally lift 10 pounds but never lift 20 pounds or more, (ii) stand and/or walk less than 2 hours in an 8-hour workday, and (iii) sit less than 6 hours in an 8-hour day. While there were no limitations on Claimant's use of her

hands and arms, she was restricted from using either of her feet or legs to operate foot or leg controls.

In this case, Claimant has presented medical evidence of a severe impairment, namely chronic back pain, which has lasted or is expected to last for a continuous period of not less than 12 months. Therefore, in consideration of the de minimis standard necessary to establish a severe impairment, Claimant has satisfied the requirements under Step 2 and the analysis will proceed to Step 3.

Step Three

The third step of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii).

The evidence shows diagnosis of, and treatment for, chronic lower back pain. Based on the objective medical evidence presented, the applicability of Listing 1.00 concerning musculoskeletal system, specifically Listing 1.04 (disorders of the spine), was reviewed.

An individual alleging degenerative disc disease meets a Listing under 1.04 if it results in a compromise of a nerve root (including the cauda equine) or the spinal cord with either (A) evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine) or (B) spinal arachnoiditis, or (C) lumbar spinal stenosis resulting in pseudoclaudication established by findings on appropriate medically acceptable imaging, manifested by chronic non-radicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Following Claimant's January 2013 MRI, Claimant was diagnosed with lumbar back pain secondary to mild disk bulge and central disk protrusion of L4-L5, with a secondary diagnosis of radiculopathy. Although the MRI establishes a compromise of the nerve root, the objective medical evidence fails to establish the severity to satisfy the other required elements under (A), (B) or (C) necessary to establish a disability under Listing 1.04. Therefore, Claimant's chronic back pain does not meet, and is not equal to, the required level of severity of a listing to be considered as disabling without further consideration.

Residual Functional Capacity

If an impairment does not meet or equal a listed impairment under step 3, an individual's residual functional capacity (RFC) is assessed before moving to step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting.

20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s). 20 CFR 416.945(a)(1). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e). RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). RFC assessment takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(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).

If the limitations and restriction imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

> Sedentary work.
> Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.
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> Light work.
> Light work 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. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, . . . he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.
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> 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, . . . he or she can also do sedentary and light work.
>
> 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, . . . he or she can also do medium, light, and sedentary work.
>
> Very heavy work.
> Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, . . . he or she can also do heavy, medium, light, and sedentary work. 20 CFR 416.967.

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 applicants 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 this case, as discussed above, Claimant suffers from chronic back pain and was diagnosed with degenerative disc disease. An MRI revealed mild disk bulge and central disk protrusion of L4-L5, with a secondary diagnosis of radiculopathy. Based on her ███ height and ███ pound weight, Claimant's body mass index (BMI) is ██, making her obese.

Claimant's treating physician, with a specialty in orthopedic surgery, limited Claimant to occasionally lifting 10 pounds, standing and/or walking less than 2 hours in an 8-hour day and sitting less than 6 hours in an 8-hour workday. He concluded that she had no restrictions on use of her hands and arms but was unable to repetitively use either foot or leg. While she did not need an assistive device to ambulate, her condition was deteriorating.

Claimant testified that her back problems caused radiating pain from her buttocks to midway down her thigh. As a result of this pain, she could walk less than a-half block, experienced pain when she bent over, and could only sit for about 20 to 30 minutes at a time before she would have to stand up. She agreed that she had no loss of bladder function and did not stumble. However, she had some leg weakness and her legs sometimes gave out when she walked. Her pain kept her from cooking, cleaning and doing laundry other than folding clothes. She also needed assistance with showering.

Ultimately, after review of the entire record to include Claimant's testimony, it is found based on Claimant's physical condition that Claimant maintains the physical capacity to perform less than sedentary work as defined by 20 CFR 416.967(a). Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

The fourth step in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to less than sedentary work activities. Claimant's prior work history in the 15 years prior to the application consists of work as a security guard (semi-skilled, light), including as a manager, a position that required Claimant to walk around the premises of a water park, and as a personal care assistant in a group home (unskilled, medium), which involved substantial physical exertion. In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at step 4 and the assessment continues to step 5.

Step 5

In step 5, an assessment of the Claimant's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. If an individual is unable to adjust to other work, then disability is found. 20 CFR 416.9633(a).

At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, based on Claimant's treating physician's limitations, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands required to perform less than sedentary work as defined in 20 CFR 416.967(a). At the time of hearing, the Claimant was 44 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant is a high school graduate.

After review of the entire record and in consideration of Claimant's age, education, work experience, RFC, and deteriorating condition, Claimant's physical limitations render her unable to perform basic work activities. Therefore, Claimant is disabled under step 5 and eligible for MA-P.

Receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. BEM 261 (July 2013), p. 2. In this case, Claimant is found disabled for purposes of the MA-P program and, therefore, 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 disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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. Process Claimant's January 31, 2013, MA application to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;

2. Supplement Claimant for lost benefits, if any, that she was entitled to receive if otherwise eligible and qualified;

3. Review Claimant's continued eligibility in May 2015.

Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: April 3, 2014

Date Mailed: April 3, 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

ACE/tlf

cc: