

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2014-7958
Issue No(s): 2009; 4009
Case No.: [REDACTED]
Hearing Date: March 27, 2014
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 March 27, 2014 March 27, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialists.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance program (MA-P) and State Disability Assistance Program?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P and State Disability Assistance benefits on March 8, 2013.
2. On August 16, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 2).
3. The Department notified the Claimant of the MRT determination on October 10, 2013.

4. On October 17, 2013, the Department received the Claimant's timely written request for hearing. (Exhibit 1)
5. On January 7, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on March 27, 2014 in this matter so that additional medical evidence could be obtained and submitted to the State Hearing Review Team. The new evidence was submitted on April 10, 2014.
7. On June 11, 2014, the State Hearing Review Team found the Claimant not disabled.
8. Claimant alleged physical disabling impairments with chronic back pain including bilateral lower back L5-S1 with bilateral nerve compression. Obesity, and deep vein thrombosis.
9. The Claimant has alleged mental disabling impairment(s) of depression.
10. At the time of hearing, the Claimant was 38, years old with a [REDACTED] birth date; was 5 ' 5 " in height; and weighed 230 pounds. BMI 38.3.
11. The Claimant graduated from high school. The Claimant has an employment history working as a medical assistance and receptionist. The Claimant also taught medical assistance at [REDACTED]. The Claimant also was a medical assistant at an urgent care facility.
12. At the time of the hearing, the Claimant was not substantially gainfully employed and is currently not working.
13. Claimant's limitations and impairments have lasted or are expected to last for 12 months or more.

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 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 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.

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that she is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

The severity of the Claimant’s alleged impairment(s) is considered under Step 2. The 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 416.920(a)(4)(ii); 20 CFR 416.920(b)(c).

A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual’s physical or mental ability to perform basic work activities. The term “basic work activities” means the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

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).

As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, the Claimant presented medical evidence that is summarized below.

A DHS 49 Medical Examination Report was completed on April 2, 2014 by the Claimant's treating physician. The Claimant's doctor diagnosed lumbar disc disease, deep vein thrombosis and asthma. The examiner noted the Claimant was obese weighing 220 pounds at 5'5". The clinical impression was that the Claimant was deteriorating and could not lift any weight, could stand less than two hours in an eight- hour workday, could sit less than six hours in an eight hour workday. The Claimant could not use either of her feet or legs to operate foot controls. The basis for the evaluation was an MRI which was attached the Doctor also indicated that the Claimant could not meet her needs in the home.

An MRI of the lumbar spine was performed March 15, 2014. The indication prior to the examination was just degeneration at L5 – S1. The impression was new 5 mm anterolisthesis of L5 relative to S1 secondary to bilateral L5 spondylolysis. Worsening compression of the exiting spinal nerves bilaterally with progressed neural foramina stenosis. The Findings stated at L5-S1 there is unroofing of a mild diffuse disc bulge. There is no spinal canal stenosis. There is severe bilateral neural foramina stenosis, with compression of the exiting L5 spinal nerves bilaterally. Disc degeneration and disc height loss at L5-S1 are again noted.

On August 7, 2013, the Claimant was admitted for a one-day hospitalization stay for deep vein thrombosis. The discharge summary noted chronic deep vein thrombosis, left leg pain and swelling. The notes indicated that the Claimant was on anticoagulation medications. The discharge information also noted chronic back pain. The Claimant was discharged in stable condition. On admission the Claimant had left leg swelling from groin to her ankle. On discharge the Claimant's blood pressure was 104/59. At the time of discharge the Claimant weighed 229 pounds. The Claimant also was required to follow up at the hematology clinic. The notes indicate the Claimant has been on anticoagulation since 2012.

On July 6, 2013, the Claimant was also seen in the emergency room for pain in her right thigh, right calf and her groin. The Claimant was discharged home as no deep vein thrombosis was detected.

The Claimant was seen in the emergency room on August 23, 2013 for a severe migraine headache after being discharged for deep vein thrombosis and blood clotting in the left leg. A CT of her brain without contrast was also performed which was unremarkable.

A left venous duplex exam was performed on August 13, 2013. The impression was chronic deep venous thrombosis of the left superficial femoral and popliteal veins. Acute deep venous thrombosis of the left, femoral vein. Acute superficial venous thrombophlebitis of the left greater saphenous vein.

A consultative mental status exam (psychiatric) was completed on October 19, 2013. The diagnosis was mood disorder secondary to general medical condition rule out Major Depressive Disorder, single episode rule out alcohol/marijuana abuse the GAF score was 45 to 50. The Medical Source Statement concluded, "based on today's exam the Claimant seemed able to understand, retain and follow instructions. Due to her depression with multiple physical limitations she is restricted to work that involves brief and superficial interactions with coworkers and supervisors and the public. The examiner noted low self-esteem some psychomotor retardation and no exaggeration of symptoms. She seemed motivated to get better.

A consultative physical examination was also conducted on October 19, 2013. The exam is of little value and is very abbreviated. The impression was herniated disc in back stable follow with provider, muscle spasm from neck to legs related to her back injury which was evaluated as stable. Claimant was advised to continue current meds for blood clot and legs, continue on [REDACTED]. The Medical Source Statement concluded based on the above medical history and examination the patient has some limitations on many work-related activities. The Claimant had reduced range of motion in her lumbar spine and cervical spine.

A Medical Examination Report was also completed March 28, 2013 by a doctor of internal medicine. The report noted decreased range of motion at cervical and lumbar spine. Claimant's condition was deteriorating and she was required to have assistance in her home. The diagnosis was a chronic asthma, deep vein thrombosis, chronic lumbar radiculopathy bilateral, clinical cervical myositis, hypertension and deep vein thrombosis.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that she has significant physical limitations upon her ability to perform basic work activities such as sitting, standing, lifting, pushing, pulling, reaching, carrying or handling and squatting. Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. Further, the impairments have lasted continuously for twelve months; therefore, the 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 the Claimant's impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant's medical record will support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

This Administrative Law Judge consulted listing 1.04 Musculoskeletal, Disorders of the Spine when making the evaluation of listings.

The requirements for listing 1.04 Disorders of the Spine, (eg. herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, ...) resulting in compromise of a nerve root, or the spinal cord. With:

- 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

The Claimant's credible testimony established that she has difficulty bending and squatting, and cannot tie her shoes or put on her socks due to her back pain in the lumbar spine and associated in both legs. The Claimant can dress herself. The Claimant further credibly testified that she can stand 20 minutes and then experiences back spasm. She can sit 30 to 45 minutes. She can lift/carry 8 pounds. The Claimant has difficulty climbing stairs and must go slowly and requires a stair rail. The Claimant's treating doctor based upon a prior MRI confirmed back pain and placed her at less than sedentary as set out above in the summary of Medical Evidence. Claimant has minimal relief of her pain with medication and a persistent pain level of 6 out of 10.

In this case, this Administrative Law Judge finds, based upon the objective medical evidence and MRI testing and the Claimant's credible testimony regarding her condition and abilities, that Claimant is considered presently disabled at the third step of the sequential evaluation. Claimant meets the listing for 1.04A, or its equivalent. The medical records establish ongoing severe chronic lumbar pain with nerve root compression and involvement, including reference to MRI's demonstrating spinal stenosis and worsening compression of the exiting L5 spinal nerves bilaterally with progressed neural foramen stenosis, with muscle involvement which satisfy the requirements of listing 1.04A. Thus it is determined that the Claimant is found disabled at Step #3 with no further analysis required. As the Claimant is found disabled for MA-P, the Claimant is also deemed disabled for purposes as SDA as well.

With regard to steps 4 and 5, when a determination can be made at any step as to the Claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is disabled for the purposes of MA and SDA programs. Therefore, the decisions to deny Claimant's application for MA -P and SDA were incorrect.

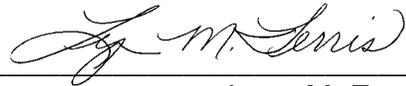
Accordingly, the Department's decision in the above stated matter is, hereby REVERSED.

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 processing the Claimant's MA - P and SDA applications dated March 8, 2013 consistent with the

application and award required benefits, provided Claimant meets all non-medical standards required for eligibility as well.

2. The Department shall issue a Supplement to the Claimant for SDA benefits it is entitled to receive in accordance with Department policy and this Decision.
3. The Department is further ORDERED to initiate a review of the Claimant's disability case in June 2015, in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan
Department of Human Services

Dated: July 2, 2014

Mailed: July 2, 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

2014-7958/LMF

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

LMF/tm

cc:

A large black rectangular redaction box covers the names and email addresses of the recipients listed under the 'cc:' field.