

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

IN THE MATTER OF:



Reg. No.: 201412716
Issue No(s): 2009, 4009
Case No.: [REDACTED]
Hearing Date: March 20, 2014
County: Mason County DHS

ADMINISTRATIVE LAW JUDGE: Gary F Heisler

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 20, 2014, from Lansing, Michigan. Participants on behalf of Claimant included herself. Participants on behalf of the Department of Human Services (Department) included AP [REDACTED] and AP Supervisor [REDACTED].

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's August 26, 2013 application for Medical Assistance (MA) 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:

1. Claimant was born on [REDACTED]. Claimant is 5' 5" tall and weighs approximately 113 pounds. Claimant's formal education consists of 12 years of school.
2. Claimant reports relevant work history as a janitor, a homemaker's aid, and as a service desk attendant. Claimant reports last working in May 2013.
3. Claimant asserts disability based on left rotator cuff arthrosis, degenerative disc disease, problems with her right knee, problems with both hips and both ankles.
4. On August 26, 2013, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

5. On October 29, 2013, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability or State Disability Assistance (SDA).
6. On November 1, 2013, Claimant was sent notice of the Department's determination.
7. On November 8, 2013, Claimant submitted a request for hearing.
8. On February 4, 2014, the State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability or State Disability Assistance (SDA).
9. At this hearing Claimant waived time limits in order to submit additional medical documentation.
10. On July 23, 2014, the State Hearing Review Team again determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability or State Disability Assistance (SDA).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step a determination is made on whether Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Based on the evidence in the record and Claimant's testimony, Claimant has not received earnings as an employee since the date of application. Therefore, Claimant is not engaged in substantial gainful activity. Claimant is not found ineligible and the analysis proceeds to step two.

STEP 2

At the second step it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). 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. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;

Capacities for seeing, hearing, and speaking;

Understanding, carrying out, and remembering simple instructions;

Use of judgment;

Responding appropriately to supervision, co-workers and usual work situations;
and

Dealing with changes in a routine work setting.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If we determine that your impairments are not severe, you are not disabled.

Claimant asserts disability based on left rotator cuff arthrosis, degenerative disc disease, problems with her right knee, problems with both hips and both ankles. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order. It is noted that there is no medical evidence in this record about Claimant's shoulders, knees, hips or ankles.

There is a May 16, 2013 Medical Imaging Report of Claimant's thoracic spine from [REDACTED] D.O. (EX 1, Page 4) The Doctor found no acute posttraumatic osseous pathology and osteopenia with mild multilevel degenerative changes.

There are June 20, 2013 Medical Imaging Reports of Claimant's cervical and thoracic spine from [REDACTED] D.O. (EX I, Pages 5 & 6) The Doctor noted some bulging discs in Claimant's cervical spine which resulted in mild foraminal stenosis. In Claimant's thoracic spine the Doctor noted no disc extrusions or significant stenosis, mild thinning and some degenerative changes.

There is a Physical Residual Functional Capacity Questionnaire signed by [REDACTED] M.D. on September 10, 2013. (Ex 4, Pages 1-5) The Doctor listed physical limitations to include occasional lifting of less than 10 pounds, the need for unscheduled breaks during an 8 hour work day, the ability to shift from sitting, standing or walking at will, frequent interference with attention and concentration, and an inability to do even a low stress job. The Doctor indicated that emotional factors and psychological conditions contribute to Claimant's symptoms and functional limitations.

20 CFR 416.927

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of

individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

The objective medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of Medical Assistance (MA) based on disability and the analysis continues.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's degenerative disc disease was compared with the Social Security Administration impairment listing 1.04.

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) 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

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning

or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

The Medical Imaging Reports in evidence show that Claimant does not meet or equal this listings.

STEP 4

At the fourth step, we assess your residual functional capacity to determine if you are still able to perform work you have done in the past. Your residual functional capacity is your remaining physical, mental, and other abilities. It is a description of your maximum performance at work-like activities considering your impairments. It does not require that you be pain free, but rather is based on your ability to do work-like activities on a sustained basis despite limitations, such as pain, from your impairments. 20 CFR 416.929 says that statements about your pain or other symptoms will not alone establish that you are disabled, there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged.

Your residual functional capacity is determined by considering all symptoms and the extent to which they can reasonably be accepted as consistent with the objective medical evidence and other evidence. All relevant evidence including reported symptoms and medical opinions are considered as required in 20 CFR 416.927, 416.928, and 416.929.

Physical, mental, and other abilities are outlined as follows in 20 CFR 416.945.

Physical abilities. When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

Mental abilities. When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

Other abilities affected by impairment(s). Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

Classifications of work based on physical exertion requirements are defined in 20 CFR 416.967.

(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.

(b) *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, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that 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.

(c) *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.

(d) *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.

Claimant asserts disability based on left rotator cuff arthrosis, degenerative disc disease, problems with her right knee, and problems with both hips and both ankles but has only submitted medical evidence about her degenerative disc disease. Consideration of reported symptoms involves two parts. First is determining if there is any underlying medically determinable physical or mental impairment, shown by medically acceptable clinical and laboratory diagnostic techniques that could reasonably be expected to produce the symptoms you have reported.

Next all the medically supported symptoms you reported are evaluated. The credibility of the symptom's intensity, persistence, and limiting affects you reported, is considered in light of the entire case record.

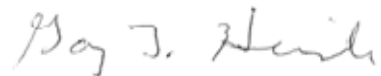
After consideration of the objective medical evidence the physical limitations described by [REDACTED] are not considered fully reliable. The medical imaging reports of Claimant's spine are the only objective medical evidence of record for use to determine physical limitations. The conditions described in those imaging reports are not indicative of the level of physical limitations [REDACTED] indicated. While [REDACTED] had a treating relationship with Claimant he is not a D.O or specialist in that area. Dr. Woltanski also indicated a belief that some of Claimant's limitations are the result of emotional factors and psychological conditions. [REDACTED] is not a psychiatrist or specialist in that area. Considered on the whole, the evidence, opinions, and credible testimony show you have the residual functional capacity to perform light work.

Your past relevant work as a service desk does not exceed your residual functional capacity to perform light work. You are capable of performing your past relevant work. You are not disabled. No further analysis is required to decide this case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that Claimant is not disabled and deny Claimant's August 26, 2013 application for Medical Assistance (MA) based on disability, and State Disability Assistance (SDA).

The Department's action is **UPHELD**.



Gary F Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 4, 2014

Date Mailed: August 4, 2014

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cc:

