

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

IN THE MATTER OF:



Reg. No.: 2014 31950
Issue No(s): 2009, 4009
Case No.: [REDACTED]
Hearing Date: July 16, 2014
County: Wayne (49)

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 July 16, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker/Eligibility Specialist.

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 (SDA) 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 May 16 2013.
2. On February 26, 2014 the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on February 27, 2014.

4. On March 10, 2014, the Department received the Claimant's timely written request for hearing. (Exhibit 1)
5. On May 15, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on July 24, 2014 in this matter so that additional medical evidence could be obtained by the Claimant and the Department. The Claimant submitted new medical evidence on August 29, 2014, which was reviewed.
7. Claimant alleged physical disabling impairments with chronic lumbar back pain, including bilateral lower back pain due to degenerative disc disease, cervical disc bulging and spurring, COPD, obesity, severe arthritis both knees, high blood pressure, torn ligament in her back, and broken hand secondary to a car accident on April 30, 2014.
8. The Claimant has not alleged any mental disabling impairment(s).
9. At the time of hearing, the Claimant was 60 years old with a [REDACTED] birth date; was 5'4" in height; and weighed 198 pounds.
10. The Claimant has a high school education. The Claimant has an employment history working as a home health care provider and worked in an office as a data entry clerk.
11. At the time of the hearing, the Claimant was not substantially gainfully employed and is currently not working.
12. Claimant has impairments which restrict her ability to stand, stoop, squat, lift and bend.
13. Claimant's limitations and impairments have lasted or are expected to last for 12 months or more.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25.

The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (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).

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.

Claimant alleged physical disabling impairments with chronic lumbar back pain, including bilateral lower back pain due to degenerative disc disease, cervical disc bulging and spurring, COPD, obesity, severe arthritis both knees, high blood pressure, torn ligament in her back, and broken hand secondary to a car accident on April 30, 2014.

The Claimant has not alleged any mental disabling impairment(s).

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

A Medical Examination Report was completed on August 16, 2014 by the Claimant's treating pain management doctor. The current diagnosis was lumbar disc bulge and cervical radiculopathy. The finding was based on an MRI regarding lumbar disc bulge. The doctor indicated that the disability was temporary with an expected return to work between 6 to 12 months. The Claimant was involved in a motor vehicle accident in April 2014 and strained a ligament in her back. The Claimant's treating doctor imposed restrictions as follows, Claimant at the time was limited to lifting carrying 10 pounds, and assistive device, a cane was necessary, and the Claimant was able to stand and/or walk less than two hours in an eight-hour workday and sit less than six hours in an eight-hour workday. The Claimant could push

pull and perform fine manipulating with her left hand and arm only, and with the right hand arm could grasp and reach. The Claimant was capable of using foot controls for with both feet and legs.

The Claimant's sports medicine doctor completed a Medical Examination Report on August 8, 2014. The diagnosis was bilateral knees with problems with her patella, diagnosed as thrombotic thrombocytopenic purpura and medial Collateral Ligament, with range of motion constriction and low back pain. The examination noted that the Claimant was obese. Restrictions were imposed including frequently lifting less than 10 pounds and occasionally lifting/carrying 10 pounds, with a note that the Claimant was capable of sitting six hours in an eight-hour workday with an assistive device required. No limitations were imposed regarding the Claimant's ability to use her hands and arms; however, she could not operate foot controls with either foot or leg. The report further notes that for her knees, no walking/carrying or bending.

On July 24, 2014 the Claimant's treating family practice doctor completed a Medical Examination Report. The diagnosis was low back pain and hernia. The Doctor noted the Claimant has COPD and asthma with coronary artery disease, as well as lower back pain with radiculopathy. The Claimant was noted as stable, and limitations were imposed. The use of a cane was noted as medically necessary, and the Claimant was limited from lifting and carrying no weight. The Claimant could not use her hands or arms for simple grasping, reaching, pushing/pulling and fine manipulation. The doctor noted that the Claimant needs assistance in and out of the bathtub laundry, food and shopping. No restrictions regarding standing or sitting were noted.

The Claimant was prescribed physical therapy for her knee pain through August 2014, to be performed 2 to 3 times a week for a total of two weeks.

A disability certificate for work and housework assistance and driving was completed by the Claimant's treating doctor due to an MRI taken of her lumbar spine and cervical spine. The doctor prescribed treatment and assistance for six weeks for all household activities. The Claimant was further restricted from driving due to pain medications and physical disability.

The Claimant reported a broken second metacarpal of her right hand in April 30, 2014. The information also notes that the Claimant had a sprained ligament in her back at that time also. Claimant was prescribed a cane on August 1, 2014.

A radiographic report (x-ray) regarding the Claimant's lumbar spine was issued on May 5, 2014. Mild osteoporosis was seen. Mild degenerative changes seen in the lumbar spine was slight exaggeration of lumbar lordosis. Compression deformity of L1 vertebral body is seen. Minimal compression deformity appears to be present, also along the anterior aspect of the superior endplate of the L2 vertebral body. These findings appear related to osteoporosis and old injuries. Narrowing of the intervertebral disc spaces is seen at L4 – L5 and L5 – S1 levels. No underlying osteoblastic or osteolytic lesion is seen. Early degenerative changes are seen in the sacroiliac joints and hip joint. A CT scan or MRI if indicated would be helpful for further evaluation.

An x-ray of the Claimant's cervical spine was conducted on May 5, 2014. The impression was mild spur formation seen in mid to lower cervical spine. Slight periarticular sclerosis is seen in the facet joints in the mid to lower cervical regions. Mild narrowing of the intravertebral disc space is seen at C4 – C5 level and possible minimally at C6 – C7 level findings consistent with muscle spasm in neck are identified. There is no evidence of fracture or dislocation. CT scan or MRI if clinically indicated would be helpful.

An MRI of the lumbar spine was performed July 19, 2014. The impression was large central disc herniation at L5 – S1. Compression deformities, superior and plates of L1, L2 and L3 vertebral bodies. The patient will require return to assess acute bone marrow edema. Central disc herniation at T 12 – L1 the report notes that T12 – L1 demonstrates a 4 mm central disc herniation which encroaches mildly the anterior epidural space. At L1 – L2 mild disc bulging and disc desiccation contributes to mild encroachment of the anterior epidural space and bilateral inferior nerve root recesses. At L2-L3 and L3-L4, there is disc desiccation and diffuse disc bulge which contributes to mild encroachment of the anterior epidural space, and inferior nerve root recesses without disc herniation. At L4 L5, there is desiccation and diffuse disc bulge contributing to inferior new nerve root recesses encroachment asymmetrically greater on the right. There is no central canal stenosis.

A consultative Internal Medicine Report was conducted on December 23, 2013. The examiner noted the Claimant was unable to get on the table and she was having difficulty doing tandem walk, heel walk and toe walk, which she did slowly. The impression was COPD with chronic shortness of breath, as well as dyspnea on exertion. Coronary artery disease post cardiac catheterization, Rheumatoid arthritis, back and leg pain. Examinee has chronic bone and joint pain secondary to rheumatoid arthritis and damaged cartilage. She has decreased range of motion in her knee joints, and some mild crepitus with flexion and extension of both knees. She uses a cane for balance and support. Based on the history and exam, the examinee will need long-term ongoing care management and support for her heart condition, lung condition, as well as her bone and joint inflammatory conditions. She would have difficulty with prolonged standing, stooping, squatting, lifting and bending.

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);

The Claimant's credible testimony established that she has difficulty and is limited with bending, cannot squat and can walk only a half block. The Claimant can stand 30 minutes and sit for 30 minutes due to her back pain. She requires assistance getting out of the bathtub and cannot touch her toes. The Claimant indicated the heaviest weight she could lift or carry would only be a couple of pounds. The Claimant has difficulty climbing stairs and must go slowly, requires a stair rail and uses her cane. Claimant has minimal relief with pain with medication, with persistent pain level of 8 out 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, as well as the numerous treating doctors who have evaluated the Claimant and a consultative exam, it is determined that given the Claimant's current abilities, that Claimant is considered presently disabled at the third step of the sequential evaluation. Claimant meets the listing for 1.04A, or its medical equivalent. The medical records establish ongoing severe chronic lumbar pain including reference to MRIs demonstrating nerve involvement which meet or satisfy the medical equivalent of the requirements of listing 1.04A.

Assuming arguendo that the Claimant was otherwise deemed not disabled at Step 3, the Claimant would have been found disabled at Step 4 given her current physical condition and limitations, as she is incapable of performing past relevant work. The Claimant would be found disabled at Step 5 as well, given her age (60 advanced age), and her treating doctors' findings that she is functionally capable of only less than sedentary work activities.

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 May 16, 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 she 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 October 2015 in accordance with Department policy.


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

Dated: October 29, 2014
Mailed: October 29, 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 rose 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:

2014-31950/LMF

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

LMF/tm

cc:

