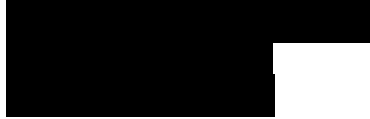


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-000476
Issue No.: 2009
Case No.:
Hearing Date: June 12, 2014
County: Livingston

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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, an in-person hearing was held on June 12, 2014, from Howell, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistance Payment Worker Jennifer Eisinger and Assistance Payment Supervisor

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

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 15, 2014, Claimant applied for SDA.
2. On February 21, 2014, the Medical Review Team denied Claimant's application.
3. On March 4, 2014, the Department sent Claimant Notice that her application for SDA was denied.
4. On March 17, 2014, Claimant submitted a Hearing Request protesting the Department's negative action.
5. On November 13, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light work. (Depart Ex. B).
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

7. Claimant is a 49 year old woman born on [REDACTED].
8. Claimant is 5'6" tall and weighs 197 lbs.
9. Claimant has a driver's license and is able to drive short distances.
10. Claimant has a high school education.
11. Claimant is not currently working. Claimant last worked in January, 2012.
12. Claimant alleges disability on the basis of reflexive sympathetic dystrophy, cervical radiculopathy, 3 fractured ribs, pneumothorax, status post arthroscopic repair of right knee, hyperlipidemia, gastroesophageal reflux disease, hypothyroid, migraines, anxiety, insomnia and depression.
13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
14. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The Department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

"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. [SDA = 90 day duration].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

In September, 2013, Claimant underwent a psychological evaluation by the Disability Determination Service. Diagnosis: Axis I: Major Depressive Disorder, recurrent, moderate; Panic Disorder without Agoraphobia; Axis II: No diagnosis; Axis III: Migraine headaches, recently torn meniscus and torn ACL, recent fracture 5th – 7th ribs and recent puncture to the right lung; Axis IV: Psychosocial stressors: financial, housing, relationship with family, health; Axis V: GAF=35. The examining psychologist opined Claimant's prognosis is guarded.

According to the DSM-IV, 4th Ed., a GAF of 35 indicates some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed adult avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).

In February, 2014, Claimant's treating physician completed a Medical Examination Report at the request of the Department. Claimant's physician indicated that she had decreased range of motion in her knee and decreased range of motion in flexion and extension of spine. She was also diagnosed with radiculopathy and depression. The physician indicated Claimant's condition was deteriorating and her physical limitations were expected to last more than 90 days. The treating physician also noted Claimant was limited in comprehension, memory, sustained concentration, following simple directions, reading, writing and social interaction and she was unable to meet her own needs in the home.

In April, 2014, Claimant's pain specialist physician completed a medical examination of Claimant. Claimant is status post traumatic injury from falling off a horse in June, 2013. She has a right knee ACL/meniscus tear, severe joint effusion with instability, right ankle sprain, lumbar HNP, reflex sympathetic dystrophy, cervical dystonia, cephalgia,

radiculopathy, anxiety and insomnia. The physician indicated that Claimant is unable to stand and/or sit upright for six to eight hours due to severe right knee pain, LB, neck pain with headaches, weakness and gait disturbance. Her disability and impairments require her to lie down during the day due to her intractable pain. She is unable to reach above her shoulders or reach down to waist level or towards the floor. She can rarely carefully handle objects or handle objects with her fingers. She is restricted to lifting and carrying less than 5 pounds. Her impairments prevent her from lifting, pulling or holding objects. She is unable to squat or kneel and unable to turn parts of her body. Her impairments would prevent her from traveling alone due to the pain exacerbations or inability to change positions. The physician opined that Claimant's disability has lasted or will last one year or more and her prognosis is guarded and her disability is not likely to change.

In April, 2014, Claimant's orthopedist completed a Medical Examination Report for the Department. Claimant is diagnosed with a right knee ACL tear, meniscus tear, chondromalacia and synovitis. The surgeon opined that Claimant's condition is deteriorating indicating Claimant is status multiple surgeries to the right knee that requires treatment with brace, time off work and physical therapy.

The credible testimony and medical records submitted at hearing verify Claimant was legally disabled for ninety (90) days. Moreover, Claimant's treating physician and orthopedic surgeon opined that Claimant's condition is deteriorating and her physical limitations are expected to last more than 90 days. Because Claimant's treating physician's and well as her surgeon's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2). As such, the Department's denial of SDA pursuant to Claimant's January 15, 2014, SDA application cannot be upheld.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Claimant is not currently disabled for SDA eligibility purposes.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Claimant's January 15, 2014, SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Claimant's medical condition for improvement in June, 2015, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.



Vicki L. Armstrong
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **6/18/2014**

Date Mailed: **6/18/2014**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

