

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

IN THE MATTER OF:

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Reg. No.: 14-007535
Issue No.: 2009
Case No.: ██████████
Hearing Date: October 23, 2014
County: OAKLAND-4

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 October 23, 2014, from Pontiac, Michigan. Participants on behalf of Claimant included AHR ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████, Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or 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) Claimant applied for MA-P on March 31, 2014.
- (2) Claimant is 41 years old.
- (3) Claimant is not currently working.
- (4) Claimant alleged disability on her application as a result of fibromyalgia, diabetes, and a closed head injury.
- (5) No medical evidence was submitted with regard to fibromyalgia or diabetes, other than oblique references in medical records related to other conditions.
- (6) Claimant alleged seizures related to a closed head injury.

- (7) Submitted medical records show seizures beginning in August, 2014.
- (8) Long-term video EEG testing conducted on August 26, 2014, determined the seizures to be psychogenic in nature, with no diagnoses relating to the Claimant's closed head injury.
- (9) Claimant alleged psychological impairments at the hearing, but did not apply for disability based MA on the basis of this impairment.
- (10) Claimant has had recurrent renal calculi.
- (11) No evidence was submitted that Claimant has continuing impairments resulting from the renal calculi, lasting at least 12 months in duration.
- (12) Claimant performs all activities of daily living.
- (13) On May 5, 2014, the Medical Review Team denied MA-P, stating that Claimant did not have a severe impairment that met durational requirements.
- (14) On May 29, 2014, Claimant was sent a notice of case action.
- (15) On July 23, 2014, Claimant filed for hearing.
- (16) On October 23, 2014, a hearing was held before the Administrative Law Judge.
- (17) The record was extended in order to allow for the submission of additional records to support Claimant's allegations.

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 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 of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a). 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and 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

The first step that must be considered is whether the Claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2014 is \$1,800. For non-blind individuals, the monthly SGA amount for 2014 is \$1070.

In the current case, Claimant testified that she was not working, and the Department has presented no evidence or allegations that Claimant is engaging in SGA. Claimant has not been engaging in SGA during any of the time this application and hearing have been pending. Therefore, the undersigned holds that the Claimant is not performing SGA, and passes step one of the five step process.

The second step that must be considered is whether or not the Claimant has a severe impairment. A severe impairment is an impairment expected to last 12 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, Claimant has not presented evidence of a severe impairment that has lasted or is expected to last the durational requirement of 12 months.

Claimant has alleged impairment on her application for benefits stemming from fibromyalgia, diabetes, and closed head injury. However, Claimant has submitted no medical evidence confirming a diagnosis of fibromyalgia or diabetes. Claimant has submitted no medical evidence showing that Claimant has any work related limitations with regards to diabetes. While these conditions were referred to obliquely in other medical records, such references are not confirmations of diagnoses, or is indicative of a specific limitation Claimant is facing. As such, the undersigned must hold that there is no evidence to support Claimant’s allegations of a severe impairment with regards to fibromyalgia or diabetes.

With regard to a closed head injury, Claimant argued that seizures, which had started recently (Claimant had alleged 6 seizures since August), were indicative of a severe impairment. Unfortunately for the Claimant, the evidence does not support Claimant’s allegations.

While the medical record does indeed show that Claimant has been having seizures since August, 2014, a long-term video EEG, conducted on August 26, 2014, diagnosed the seizures as psychogenic in nature. That is to say that, while the seizures are real, they do not have an organic component that would be connected to a closed head injury. Furthermore, no objective medical testing in the record shows that the seizures alleged by the Claimant have any connection to Claimant’s alleged closed head injury.

Therefore, as the seizures alleged by the Claimant are not shown by the medical record to be connected to the alleged closed head injury, Claimant has thus not submitted any medical evidence that shows that the alleged closed head injury is a severe impairment.

With regard to considering the seizures themselves as a severe impairment, Claimant's application was filed on March 31, 2014. A decision was issued on May 29, 2014. Per Claimant's testimony and the medical record, the seizures did not start until August, 2014, more than two months after the decision had been issued by the Department.

The Administrative Law Judge can only consider the information that the Department knew, or should have known, at the time the decision was issued. At the time of the initial decision, Claimant had not had seizures, nor had Claimant applied for disability based MA on the basis of seizures. As such, because this condition did not exist at the time of the initial application, the undersigned cannot find disability for this condition for the months Claimant has requested MA, nor can the condition be considered for continuing MA.

This reasoning also applies with regards to Claimant's alleged psychological symptoms; at no point on the initial application did Claimant allege psychological symptoms. Therefore, that condition may not be considered here.

Finally, with regard to Claimant's allegations of recurrent renal calculi, for which there exists medical evidence, there is no evidence that such a condition meets durational requirements.

While the renal stones may be recurrent, the symptoms that accompany each bout are not. The undersigned believes that each occurrence of a stone must be considered a separate, discrete impairment, and no evidence exists that the symptoms from these impairments will last the required duration of 12 months. There is no evidence in the packet that Claimant has continuing symptoms after the stone has passed. Even if the recurrence of the calculi were considered a single, discrete impairment, there is no indication in the medical record that Claimant will continue to have renal calculi over the next 12 months, and that the three incidents Claimant has had in the past 12 months were part of a larger, chronic pattern.

For these reasons, the undersigned holds that Claimant has failed to present medical evidence of a severe impairment that was alleged at the time of application with a duration of longer than 12 months.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that the Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for a period of 12 months or more. 20 CFR 416.920(c).

The medical record as a whole does not establish any impairment that would impact Claimant's basic work activities for a period of 12 months or 90 days (for the purposes of the SDA program). There are no current medical records in the case that establish that Claimant continues to have a serious medical impairment. There is no objective

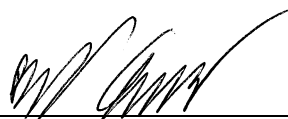
medical evidence to substantiate the Claimant's claim that the impairment or impairments are severe enough to reach the criteria and definition of disabled. Accordingly, after careful review of Claimant's medical records, this Administrative Law Judge finds that Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) or SDA program.

As a finding of not disabled can be made at the step two of the five step process, no further analysis is required. 20 CFR 416.920

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/9/2015**

Date Mailed: **3/9/2015**

RJC / tm

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 48909-8139

CC:

[REDACTED]