

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

IN THE MATTER OF:

████████████████████
████████████████
████████████████

Reg. No.: 2013-45063
Issue No.: 4009
Case No.: ██████████
Hearing Date: October 10, 2013
Wayne (15)

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 October 10, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker.

ISSUE

Did DHS properly denied Claimant's application for State Disability Assistance (SDA) on the basis that Claimant is not a disabled individual.

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 November 27, 2012, Claimant applied for SDA benefits .
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On April 23, 2013, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On April 26, 2013, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On May 3, 2013, Claimant requested a hearing disputing the denial of MA benefits.
6. On July 29, 2013, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by determining that Claimant's impairments did not significantly limit the Claimant's ability to perform basic work activities and that the Claimant had not met the severity requirements of BEM 261.
7. An interim order was issued on October 31, 2013 requesting additional evidence be obtained on Claimant's behalf. The Claimant was requested to provide the DHS-49 from her treating doctor, which was provided. The Department was requested to obtain one year of medical records from the John D. Dingell Veterans Administration Medical Center and was unable after several attempts to obtain this documentation. The new medical evidence which was received was sent to the State Hearing Review for its review on March 26, 2014.
8. On May 23, 2014, the State Hearing Review Team determined that the Claimant was not disabled and that no physical impairment which significantly limited the Claimant's ability to perform basic work activities was presented.
9. As of the date of the administrative hearing, Claimant was a 49 year-old female (██████████), with a height of 5'11" and weight of 285 pounds. The Claimant is now 50 years of age.
10. The Claimant completed a GED. Claimant's past relevant work history included providing patient care in assisted living facilities, and working at a Laundromat as an attendant. The Claimant also performed cleaning services at the facility, which included basic janitorial work. The Claimant last worked in 2012.
11. Claimant has alleged physical disabling impairments due to two herniated discs and sciatica, with back pain, and radiating pain down her back and legs. The Claimant also alleges arthritis in her left knee causing her to require use of a cane. Carpal tunnel syndrome in both hands requiring use of a brace on her left hand. The Claimant also alleged diabetes with nerve pain due to her diabetes in her feet and shoulders.
12. Claimant has alleged mental disabling impairments, however her application as confirmed by the Department did not include any reference to a mental impairment which would form the basis for a mental impairment.

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.

The controlling DHS regulations are those that were in effect as of August 2011, the month of the application which Claimant contends was wrongly denied.

Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five-step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. In the present case, Claimant denied having any employment since the date of the SDA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12-month duration requirement. 20 CFR 416.920 (a)(4)(ii). Multiple impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. 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/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a *de minimis* standard upon Claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience

were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended “to do no more than screen out groundless claims.” *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

The Claimant has alleged physical disabling impairments due to two herniated discs and sciatica, with back pain, and radiating pain down her back and legs. The Claimant also alleges arthritis in her left knee causing her to require use of a cane. Carpal tunnel syndrome in both hands requiring use of a brace on her left hand. The Claimant also alleged diabetes with nerve pain due to her diabetes in her feet and shoulders.

Claimant did not alleged mental disabling impairments in her SDA application.

In determining whether Claimant’s impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation. A summary of the medical evidence follows.

The medical evidence available was limited to a DHS-49 completed by the primary care doctor who has treated the Claimant since 2005. The diagnosis was hypertension, low blood pressure, hepatitis C, diabetes and environmental allergies. This examination was completed in December 2012. At the time of the exam, the Claimant was noted as stable and not requiring any assistance with meeting her needs in the home. The exam noted generally that the Claimant functions independently and completes activities of daily living independently. Pain level noted seven. The cardiovascular system noted degenerative mitral changes with no abnormal findings. Hepatitis C viral limit was non-detectable. Chronic low back pain was noted, no recent back films. Neurologically and mentally, there were no abnormal findings with respect to the evaluation.

Another DHS-49 was completed by the same primary care physician. The examining doctor noted the same diagnosis as before adding degenerative disc disease, smoker, foot pain, depression and carpal tunnel syndrome. With regard to the cardiovascular findings, the notes indicate tachycardia. With respect to musculoskeletal, the examiner noted full range of motion with mild limitations due to stiffness and discomfort. The examination laboratory and x-ray findings noted foot x-rays and cervical spine degenerative changes at C7. The clinical impression of the examiner treating physician was that the Claimant’s condition was stable and did not impose any physical limitations or mental a limitations. The examiner further found the Claimant could meet her needs in the home.

The Claimant presented no medical testing records or other medical evidence of carpal tunnel syndrome, or MRI findings regarding her low back pain, and cervical degeneration except by way of history. The Department received a Communication from the Department of Veterans Affairs indicating that they needed additional time to complete the processing of the request for records even though they were required to process records within 20 working days. The record was held open beyond the initial 60 day period so that records could be obtained. At the time the record was closed in this matter and the evidence sent to The State Hearing Review Team on March 26, 2011, no records had been received from the VA notwithstanding their indication that records would be received within 40 days of their notice to the Department dated November 22, 2013. The Department further followed up with the Veterans Administration in an attempt to contact medical records department at the VA to determine status of records processing, no further communication from the Department was received. Therefore, it is determined that the records as requested by the Department were never provided by the Department of Veterans Affairs.

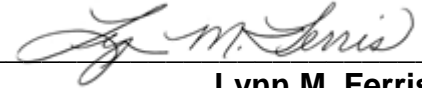
The Claimant testified to the following limitations, she could stand approximately 10 minutes and sit approximately 30 minutes, then requiring that she get up and move. She could walk less than one block, could not perform a squat, and could bend at her waist but her range of motion was limited. The Claimant could shower and dress herself and used a shower chair when doing so. The Claimant could not touch her toes. The Claimant testified to a level of pain at level VII with medications. The Claimant testified she could carry approximately 8 pounds; however, due to her carpal tunnel condition, had difficulty gripping objects. The Claimant indicated that she had recently completed a rehabilitation program for back for her back and carpal tunnel conditions. No records of the outcome of this program were provided

However, the evidence was not supportive of a finding that Claimant was physically limited to the extent she now testified. Claimant testified to ongoing restrictions, but Claimant's testimony had no support from medical documents.

An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. Even applying a *de minimis* standard, it is found that Claimant failed to establish an impairment that has or is expected to last 12 months and which is severe. Thus, Claimant failed to establish having a severe impairment. Accordingly, it is found that DHS properly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied SDA benefits to Claimant based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 30, 2014

Date Mailed: June 30, 2014

NOTICE OF APPEAL: 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).

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.

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

2013-45063/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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]