

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-008067
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 03, 2014
County: Clare

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on December 03, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Bria Blair and her authorized hearings representative [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] as hearing facilitator. During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. On January 12, 2015, the Claimant was granted an extension to submit additional medical evidence. On February 16, 2014, the record was closed.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On March 18, 2014, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On May 2, 2014, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that her impairments do not meet the durational requirement.
3. On May 9, 2014, the Department sent the Claimant notice that it had denied the application for assistance.
4. On August 1, 2014, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
6. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application and the Claimant reported that a SSI appeal is pending.
7. The Claimant is a 31-year-old woman whose birth date is [REDACTED].
8. Claimant is 5' 8" tall and weighs 383 pounds.
9. The Claimant attended college and is a certified nursing assistant.
10. The Claimant is able to read and write and does have basic math skills.
11. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
12. The Claimant has past relevant work experience as a certified nursing assistant where she was required to lift patients weighing as much as 250 pounds.
13. The Claimant's disability claim is based on carpal tunnel syndrome, back pain, sciatica, diabetes, neuropathy, and breast abscess.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant testified that she has not been employed since November of 2013 and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore this Administrative Law Judge finds that the Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 2

Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). 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. 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 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 31-year-old woman that is 5' 8" tall and weighs 383 pounds. The Claimant alleges disability due to diabetes, neuropathy, breast abscess, carpal tunnel syndrome, sciatica, and back pain.

The objective medical evidence indicates the following:

Medical records indicate that the Claimant was treated for recurrent left sub-areolar breast abscess on December 13, 2013.

The Claimant experiences severe pain from her shoulders to her hips and that is exacerbated by sitting.

The Claimant suffers from numbness and weakness in her right hand, which is her dominant hand. Medical tests revealed significantly prolonged distal latencies and low-amplitude compound muscle action potentials. The Claimant has been diagnosed with carpal tunnel syndrome of both wrists.

The Claimant's treating physician determined that the Claimant is capable of lifting 25 pounds occasionally and that she is capable of grasping, reaching, pushing, pulling, and fine manipulating objects with both hands. The Claimant was found to be capable of standing and/or walking at least 2 hours in an 8-hour workday.

The Claimant is capable of preparing meals, shopping for groceries, sweeping floors, washing dishes, and washing laundry. The Claimant enjoys knitting as a hobby.

The evidence on the record indicates that the Claimant's has been diagnosed with carpal tunnel syndrome by a treating physician, which has resulted in significant impairments to her grip strength. The Claimant experiences significant pain throughout her body due to sciatica and neuropathy as a symptom of untreated diabetes. The Claimant retains the ability to perform fine and gross movements effectively with her upper extremities including preparing simple meals, feeding herself, and caring for personal hygiene including showering and dressing herself without assistance. The Claimant is capable of washing dishes and laundry. The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Therefore, this Administrative Law Judge finds a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months.

STEP 3

Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The effects of diabetes are most readily observed through its impairments of other body systems. The Claimant's impairment failed to meet the listing for diabetes under Section 9.00 Endocrine because the objective medical evidence does not support a finding of another severe impairment in another body system caused by diabetes. The Claimant's diabetes will be further considered when evaluating her residual functional capacity.

The Claimant's impairment failed to meet the listing for carpal tunnel syndrome and neuropathy under section 1.02 Major dysfunction of a joint because the objective medical evidence does not demonstrate that the Claimant's impairment involves a weight bearing joint resulting in inability to ambulate effectively, or impairment in each upper extremity resulting in inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively includes the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

The Claimant's impairment failed to meet the listing for a back injury and sciatica under section 1.04 Disorders of the spine, because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively.

The Claimant's impairment failed to meet the listing for an abscess under section 8.00 Skin Disorders because the objective medical evidence does not demonstrate evidence of an uncontrollable skin disorder that limits the Claimant's ability to do fine and gross motor movements or limit her ability to ambulate effectively. The objective medical evidence indicates that medical evidence supports a finding that the Claimant's condition is recurrent but has improved with treatment.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do her past relevant work, the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor... 20 CFR 416.967.

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. 20 CFR 416.967(a).

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.... 20 CFR 416.967(b).

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. 20 CFR 416.967(c).

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. 20 CFR 416.967(d).

To determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

Semi-skilled work. Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks. 20 CFR 416.968(b).

Skilled work. Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity. 20 CFR 416.968(c).

The Claimant is capable of lifting 25 pounds occasionally. The Claimant is capable of performing fine and gross movements with her upper extremities. The Claimant is capable of grasping, reaching, pushing, and pulling. The Claimant experiences some loss of grip strength but not enough to prevent all work related activity.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform sedentary as defined in 20 CFR 404.1567 and 416.967.

The Claimant has past relevant work experience as a certified nursing assistant where she was required to lift patients weighing as much as 250 pounds. The Claimant's prior work fits the description of heavy work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work substantially similar to work performed in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, she is not disabled. If the Claimant is not able to do other work and meets the duration requirement, she is disabled.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do less strenuous tasks if demanded of her. The Claimant's testimony as to her limitations indicates that she should be able to perform sedentary work. The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

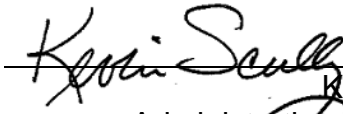
Claimant is 31-years-old, a younger person, under age 50, with a high school education and above, and a history of semi-skilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work. Medical Assistance (M.A.) is denied using Vocational Rule 201.28 as a guideline.

It should be noted that the Claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 Medical Assistance (M.A.) benefits.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

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

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

KS/las

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:

