

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016490
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: January 14, 2015
County: MUSKEGON

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 January 14, 2015, from Muskegon, Michigan. Participants on behalf of the Claimant included the Claimant, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager, [REDACTED].

ISSUE

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

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 September 19, 2014, the Claimant applied for SDA.
2. On November 3, 2014, the Medical Review Team denied the Claimant's request.
3. On November 12, 2014, the Claimant submitted to the Department a request for hearing.
4. The Claimant is 48 years old.
5. The Claimant completed education through high school.
6. The Claimant has employment experience and last worked in 2011 as an adult foster care worker and has experience in home help. The Claimant was once also a security officer for hospital and previous to that was an assistant manager at a boating center.

7. The Claimant's limitations have lasted for 12 months or more.
8. The Claimant suffers from fibromyalgia, Lumbago, cervicalgia, PTSD, Gerd, hyperlipidemia, COPD, osteoarthritis, persistent insomnia, foot pain and depression.
9. The Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
10. The Claimant has significant limitations with it the ability to complete a normal workday and workweek without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

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 exempted from

the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate

increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on the Listing 1.04, Claimant's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Claimant is significantly affected in her ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 1.04 requires a disorder of the spine such as a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture, resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine) and lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

In this case, the record contains a MRI report from February 5, 2015. The MRI indicates that at L3-4 there has been interval development of marked loss of the disc space height with moderate diffuse disc bulge. There remained enhancing scar tissue associated with the site of the previous, shallow, broad-based left lateral recess disc protrusion with superior extrusion. There appeared to be a tiny focal recurrent left lateral recess disc protrusion, best demonstrated on the sagittal images. There was mild bilateral, neural foraminal encroachment. At L 4-5 there was further loss of disc space height with moderate diffuse disc bulge and end plate spur. There was moderate left and moderate to severe right neural foraminal encroachment.

The Claimant testified that she has urinary incontinence due to her back pain. The Claimant can only stand for 20 minutes and only sit for 20 minutes. The Claimant uses a cane to ambulate. The Claimant cannot bend at the waist, she cannot squat and some days she even needs help showering and dressing herself. The Claimant uses a cane and sometimes a walker to ambulate. The Claimant was examined by the Department's psychologist. The Department psychologist indicates that the Claimant has Depressive Disorder NOS secondary to chronic pain. The Claimant has a GAF score of 50-55. The Claimant would be moderately limited in the ability to complete a normal workday and workweek without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The Department's psychologist reports that the potential for the Claimant being gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded, pending medical resolution.

In this case, this Administrative Law Judge finds that the Claimant may be considered presently disabled at the third step. The Claimant appears to meet listing 1.04 or its equivalent. This Administrative Law Judge will not continue through the remaining steps of the assessment. The Claimant's testimony and the medical documentation support the finding that the Claimant meets the requirements of a listing.

Therefore, the Claimant is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is medically disabled as of September, 2014.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated September 19, 2014, if not done previously, to determine the Claimant's non-medical eligibility. The Department shall inform the Claimant of the determination in writing. A review of this case shall be set for April, 2016.



Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/23/2015**

Date Mailed: **4/23/2015**

SEH/sw

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:

