

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-002409
Issue No.: SDA - DISABILITY
Case No.: [REDACTED]
Hearing Date: March 19, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 March 19, 2015, from Ypsilanti, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED], sister. Participants on behalf of the Department of Human Services (Department) included [REDACTED], 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. On September 2, 2014, Claimant applied for SDA.
2. On January 31, 2015, the Medical Review Team (MRT) found Claimant not disabled.
3. On February 4, 2015, the Department notified Claimant of the MRT determination.
4. On February 10, 2015, the Department received Claimant's timely written request for hearing.
5. Claimant alleged disabling impairments including fibromyalgia, degenerative disc disease, sciatica, bursitis in left hip, chronic obstructive pulmonary disease (COPD), hypothyroid, depression, and anxiety.
6. At the time of hearing, Claimant was 44 years old with a [REDACTED], birth date; was 5'5" in height; and weighed 250 pounds.

7. Claimant completed the 12th grade and has a work history including finance company account manager, picker and packer, optical company customer service representative and receptionist, self-storage manager, and mortgage customer service representative.
8. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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.

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). The person claiming a physical or mental disability has the burden to establish it 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 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's

pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity. Therefore, Claimant is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples 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.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disabling impairments including fibromyalgia, degenerative disc disease, sciatica, bursitis in left hip, chronic obstructive pulmonary disease (COPD), hypothyroid, depression, and anxiety. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

A January 3, 2014, clinic record documents diagnosis and treatment of multiple conditions, including chronic pain, generalized anxiety disorder, degeneration of lumbar or lumbosacral intervertebral disc, fibromyalgia muscle pain, asthma, and obesity.

Claimant was hospitalized June 13-18, 2014, for recurrent severe major depression without psychosis.

A June 20, 2014, delivery receipt indicates an order for a 4 wheel walker with padded seat.

A July and August 2014, pain center records document diagnosis and treatment of fibromyalgia, back pain, and trochanteric bursitis. Ongoing medical issues included insomnia, depression, chronic low back pain, sciatica, hypothyroidism, and emphysema.

Claimant was seen in the emergency department July 23, 2014, for chronic low back pain.

Claimant was seen in the emergency department August 12, 2014, for sciatica.

An August 20, 2014, family medicine record documents diagnoses of hypothyroidism and fibromyalgia.

Claimant was seen in the emergency department August 26, 2014, for bursitis of hip and acute chronic hip pain.

July and August 2014 mental health treatment records document diagnoses of major depressive disorder and panic disorder.

An August 27, 2014, Mental Impairment Questionnaire noted: numerous serious limitations, unable to meet competitive standards, or no useful ability to function with mental abilities and aptitudes needed to do unskilled work; that the psychiatric conditions exacerbates pain or other physical symptoms; marked functional limitations; a medically documented history of a mental disorder of at least 2 years duration that has caused more than a minimal limitation of ability to do basic work activity; three or more episodes of decompensation within a 12 month period each at least two weeks long; a residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in environment would be predicted to cause the individual to decompensate; an anxiety related disorder and complete inability to function independently outside the area of one's home; expected absence of more than four days per month from work; and impairment has lasted or can be expected to last for at least 12 months.

A September 2, 2014, rheumatology record documents a diagnosis of fibromyalgia.

Claimant was seen in the emergency department September 5, 2014, for bursitis of hip.

Claimant was seen in the emergency department September 16, 2014, for back pain.

A September 24, 2014, DHS-49 E Mental Residual Functional Capacity indicated marked limitations with 8 of the 20 listed areas, including the ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. Moderate limitations were indicated with 8 additional areas.

September and November 2014, progress notes document diagnosis and treatment of multiple conditions, including obesity with purposeful weight loss, chronic back pain, anxiety, depression, and insomnia.

An October 20, 2014, DHS-49 Medical Examination Report documents diagnoses of chronic lumbar spine pain and fibromyalgia. Claimant's condition was noted to be improving. Physical limitations were not marked for lifting/carrying, and it was indicated that Claimant can sit about 6 hours in an 8 hour work day and use her extremities for repetitive actions.

Claimant attended physical therapy October 14-31, 2014, for low back pain and left hip pain.

On November 26, 2014, Claimant attended a consultative psychiatric/psychological examination. Diagnosis was longstanding chronic depression. Claimant cried continuously throughout the interview. Claimant described symptoms including crying at home regularly, appetite loss, low energy, fatigue, feelings of sadness, and current suicidal ideation. Claimant described difficulties with daily functioning including spending many days in bed, trouble sleeping, showering every several days, not doing any housework, and difficulty with memory and concentration. Claimant's Global Assessment of Functioning (GAF) was 50.

On December 13, 2014, Claimant attended a consultative medical examination. Conclusions noted lumbosacral pain for 15 years with mild inhibition of activities of daily living, unable to sit or stand for longer than 30 minutes, and difficulty with ambulation. Fibromyalgia, not currently in flare, was noted with associated symptoms of depression and anxiety. Claimant was able to tolerate all activities asked of her, had not loss of digital dexterity, and was able to ambulate without a limp.

Claimant was seen in the emergency department January 9, 2015, for acute low back strain and left sided sciatica.

Claimant was seen in the emergency department January 31, 2015, for low back strain and acute exacerbation of chronic radicular low back pain.

Claimant was seen in the emergency department March 5, 2015, for chronic back pain.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, the Claimant is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of chronic low back pain, degeneration of lumbar or lumbosacral intervertebral disc, sciatica, bursitis of hip, fibromyalgia, hypothyroidism, emphysema, asthma, obesity, depression, anxiety, panic disorder, and insomnia.

Based on the objective medical evidence, considered listings included 12.00 Mental Disorders. The medical evidence was sufficient to meet the intent and severity requirements of listing 12.04 and/or 12.06, or its equivalent. The August 27, 2014, Mental Impairment Questionnaire and September 24, 2014, DHS-49 E Mental Residual Functional Capacity forms completed by the treating mental health provider support that Claimant meets or equals these listings. The November 26, 2014, consultative psychiatric/psychological examination report was also supportive. Further, Claimant was hospitalized June 13-18, 2014, for depression. Accordingly, the Claimant is found disabled at Step 3.

In this case, the Claimant is found disabled for purposes SDA benefits as the objective medical evidence establishes a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Claimant's impairments did preclude work at the above stated level for at least 90 days.

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 disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate a review of the application dated September 2, 2014, for SDA, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for September 2015.
2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/31/2015**

Date Mailed: **3/31/2015**

CL/hj

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:

