

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

IN THE MATTER OF:



Reg. No.: 15-010370
Issue No.: 4001
Case No.: [REDACTED]
Hearing Date: August 27, 2015
County: GENESEE-UNION ST
DISTRICT

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 August 27, 2015, from Lansing, Michigan. Participants on behalf of Claimant included herself and her brother. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist (ES) [REDACTED].

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny her April 10, 2015 State Disability Assistance (SDA) application?

FINDINGS OF FACT

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

1. Claimant was born on March 24, 1958. Claimant is 5' 5" tall and weighs approximately 240 pounds. Claimant's formal education consists of an Associate's Degree.
2. Claimant reports relevant work history in sales and child care. Claimant reports last working in March 2014.
3. Claimant asserts disability based on pain, fibromyalgia and fainting.
4. On April 10, 2015, Claimant applied for State Disability Assistance (SDA).

5. On June 4, 2015, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for State Disability Assistance (SDA).
6. On June 11, 2015, Claimant was sent notice of the Department's determination.
7. On June 22, 2015, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same analysis as the Social Security Administration standards with one specific difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step a determination is made on whether Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Based on the evidence in the record and Claimant's testimony, Claimant has not received earnings as an employee since the date of application. Therefore, Claimant is not engaged in substantial gainful activity. Claimant is not found ineligible and the analysis proceeds to step two.

STEP 2

At the second step it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). 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. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

Physical functions such as 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

Dealing with changes in a routine work setting.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In addition to the limiting effect of the impairments they must also meet durational requirements of 90 days for State Disability Assistance (SDA). If we determine that your impairments are not severe, you are not disabled.

Claimant asserts disability based on pain, fibromyalgia and fainting. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is a Clinical Summary (Pages 33-38) following a March 31, 2015 appointment with Dr. Garibay. Claimant's chief complaint at the appointment was "pain all over, needle like picks in left arm and leg." The Doctor assessed Claimant as having Diabetes Mellitus and Fibromyalgia. The Doctor did not identify any mental or physical restrictions or limitations supported by medical testing, imaging or diagnosis.

There is an Internal Medicine Evaluation (Claimant's Exhibit Pages 2-4) dated May 20, 2015, from Dr. Razzak. The Doctor had the impression of: diabetes; hypertension; bronchial asthma; dyslipidemia; fibromyalgia; hypothyroidism; tension headache; DJD; DDD; consider sleep apnea; and consider bipolar effective disorder. However, the

examination identified no abnormalities. The Doctor's comment was "From the standpoint of Internal Medicine patient needs all the help of the state for health insurance. The patient has numerous subjective complaints and not too much objective findings, I think a psychiatric evaluation might be of help for you to determine disability. If she is cleared by psychiatrist she may be able to do light duty."

There is an August 18, 2015 letter from N. Pilipenko, Ph.D.,L.P. (Claimant's Exhibit Page 1) The letter states that Claimant is currently receiving psychological services in the form of psychotherapy to address symptoms of depression and anxiety, to improve coping with chronic pain, and to better manage interpersonal difficulties. The letter also states Claimant is taking Cymbalta 60mg, twice daily. The letter does not identify any mental restrictions or limitations.

20 CFR 416.927

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

The objective medical evidence does not identify any specific impairment, or list any specific limitation. However, Dr. Razzak's evaluation implies a restriction to "light duty." Claimant is not disqualified from receipt of State Disability Assistance Program and the analysis continues.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

There is insufficient medical evidence to establish a specific impairment or use for comparison with the Social Security Administration impairment listings.

STEP 4

At the fourth step, we assess your residual functional capacity to determine if you are still able to perform work you have done in the past. Your residual functional capacity is your remaining physical, mental, and other abilities. It is a description of your maximum performance at work-like activities considering your impairments. It does not require that you be pain free, but rather is based on your ability to do work-like activities on a sustained basis despite limitations, such as pain, from your impairments. 20 CFR 416.929 says that statements about your pain or other symptoms will not alone establish that you are disabled, there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged.

Your residual functional capacity is determined by considering all symptoms and the extent to which they can reasonably be accepted as consistent with the objective medical evidence and other evidence. All relevant evidence including reported symptoms and medical opinions are considered as required in 20 CFR 416.927, 416.928, and 416.929.

Physical, mental, and other abilities are outlined as follows in 20 CFR 416.945.

Physical abilities. When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work

activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

Mental abilities. When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

Other abilities affected by impairment(s). Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

Classifications of work based on physical exertion requirements are defined in 20 CFR 416.967.

(a) *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.

(b) *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. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *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.

(d) *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.

After consideration of the objective medical evidence the physical limitations implied by Dr. [REDACTED] have been determined to carry the most evidentiary weight. There are no mental limitations described in any of the objective medical evidence.

Considered on the whole, the evidence, opinions, and credible testimony show you have the residual functional capacity to perform light work of any kind. In accordance with the Medical-Social Questionnaire (DHS-49-F) you submitted indicates past relevant work history in sales. Your past relevant work in sales does not exceed your residual functional capacity to perform light work.

You are capable of performing some of your past relevant work. You are found ineligible at this step. No further analysis is required.

DECISION AND ORDER

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


Gary Heisler

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **9/28/2015**

Date Mailed: **9/28/2015**

GFH / [REDACTED]

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:

