

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-014625
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: October 07, 2015
County: Ogemaw

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 7, 2015 from Lansing, Michigan. Claimant personally appeared and provided testimony. [REDACTED] (Eligibility Specialist) appeared on behalf of the Department of Health and Human Services (Department).

ISSUE

Did the Department properly deny Claimant's application for State Disability Assistance (SDA)?

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 4, 2015, Claimant filed an application for SDA benefits alleging disability.
2. On April 17, 2015, the Medical Review Team (MRT) denied Claimant's application.
3. On or about July 20, 2015, the Department sent Claimant notice that her application was denied.
4. On August 11, 2015, Claimant filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on October 7, 2015.

6. During the hearing, Claimant has alleged the following disabling impairments: depression, anxiety, panic attacks, herniated disc in neck, nerve damage, throat problems, rotator cuff problems in right shoulder and arthritis.
7. At the time of the hearing, Claimant was 52 (fifty-two) years old with a birth date of [REDACTED]; stood 5'5"; and weighed approximately 193 (one hundred and ninety-three) pounds (lbs).
8. Claimant has difficulty reading and was enrolled in the special education program while in school. She cannot perform basic math calculations. Claimant has an employment history as a home health care aide.

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 Health and Human Services (DHHS 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Bridges Eligibility Manual (BEM) contains policy statements and instructions for caseworkers regarding the SDA program. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM 261, p. 1 (7-1-2015).

A person is disabled for SDA purposes if he or she: (1) receives other specified disability-related benefits or services¹; or (2) resides in a qualified Special Living Arrangement facility; or (3) is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or (4) is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS). BEM 261 pp 1-2.

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 MA program. 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. (Emphasis added).

¹Retirement, Survivors and Disability Insurance (RSDI) due to disability/blindness, Supplemental Security Income (SSI) due to disability/blindness, Medicaid as blind/disabled based on a disability examiner or MRT determination or hearing decision, or Michigan Rehabilitation Services.

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

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 (e.g. 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 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.

At step one, the Administrative Law Judge must determine 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 he or 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, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine 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; 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, he or she is not disabled.

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, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

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). 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 determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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.
20 CFR §416.921(b).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals 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 meets or medically equals 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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his or 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 (fifteen) years or 15 (fifteen) 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 his or 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.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his or her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he or she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he or she is disabled.

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. The terms are defined as follows:

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).

The analysis begins at Step 1. To be eligible for disability benefits, a person must be unable to engage in substantial gainful activity (SGA). Claimant is not engaged in substantial gainful activity and has not worked since 2014. Therefore, Claimant is not disqualified from receiving disability at Step 1 and the analysis proceeds to Step 2.

At Step 2, Claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce Claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

In the present case, Claimant alleges disability due to depression, anxiety, panic attacks, herniated disc in neck, nerve damage, throat problems, rotator cuff problems in right shoulder and arthritis. The following is a summary of Claimant's relevant medical records.

On [REDACTED], Claimant had a mental health visit which indicated that she smoked marijuana daily to take her pain away and to help her sleep. The records noted that she was very anxious and hostile during this visit.

Claimant had a CMH mental health assessment on [REDACTED]. The assessment indicated that Claimant should have counseling or treatment for her marijuana usage. Claimant declined that offer. She was diagnosed with: 1) major depressive disorder or, recurrent moderate, 2) cannabis abuse, 3) anxiety disorder. Claimant's GAF is 51. The assessment also indicated that Claimant did not meet the criteria for a severe and persistent mental illness. She had no history of hospitalizations or mental health involvement. Her depression and anxiety did not appear to interfere substantially with her capacity to remain in the community without supportive treatment or services from community mental health. Her current symptoms could be adequately addressed through other community resources. This assessment also indicated that Claimant did not meet the 1996 mental health code definition of developmental disabilities.

The records also indicated that Claimant was diagnosed with a panic disorder, Agoraphobia and major depressive disorder.

Claimant's mental health treatment records dated [REDACTED] indicated that she had been taking extra doses of Xanax and Lexapro because she felt that her prescribed dosage amounts were ineffective.

On [REDACTED], Claimant had a mental health visit and the records indicated that she requested an increase in dosage of her Xanax.

On [REDACTED], Claimant had another mental health treatment visit where she indicated that she did not want to go to a substance group. The records noted that she indicated that Xanax, and nothing else, would help her sleep.

On [REDACTED], Claimant's mental health treatment records indicated that she made an appointment with Dr. Ossian because her primary care physician would not refill her Xanax. She reportedly smoked marijuana daily and drinks a six pack of beer with her friends.

On [REDACTED], Claimant's mental health treatment records indicated that she had less stress due to her boyfriend being home.

On [REDACTED], Claimant's behavioral treatment records showed that she had been staying at her house to help take care of her sister. She had been taking Seroquel.

On [REDACTED], Claimant had an MRI of her thoracic spine which indicated degenerative changes without fracture or spinal stenosis. The cord signal was normal. She also had an MRI of the lumbar spine which showed minimal degenerative changes at L1-L2 and L2-L3. She had small disc bulges at L3-L4, L4-L5 levels which caused mild

bilateral inferior neuroforamina narrowing. She had small central disc protrusion at L5-S1 level without spinal stenosis.

On [REDACTED], Claimant had an MRI of her right shoulder which indicated tendinosis and bursitis but no tear. She also had an MRI of her cervical spine which showed disc protrusion behind the C6 vertebra. She had marked effacement of the thecal sac and minimal effacement of the anterior aspect of the cervical cord.

Claimant's cervical and lumbar x-rays taken on [REDACTED] were normal. She did have some degenerative cervical spondylitis and degenerative disc disease and arthritis at C5 and C6. Shoulder x-rays showed mild to moderate arthropathy and shoulder impingement. Her thoracic spine x-rays were also normal.

Claimant's treatment records in March, 2015 showed that she's been taking the following medications: Fluoxetine, Xanax, Seroquel, Lipitor, and Norco.

The objective medical evidence shows that Claimant has a medically determinable impairment or a combination of impairments that are "severe" for purposes of Step 2. Claimant has presented medical evidence that demonstrates she has some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination of impairments, that has more than a *de minimus* effect on her basic work activities. Further, the impairments have lasted continuously for 12 (twelve) months; therefore, Claimant is not disqualified from receiving MA-P benefits at Step 2.

The analysis proceeds to Step 3 where the medical evidence of Claimant's conditions are compared to the listings. In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of depression, anxiety, tendinosis and bursitis of the right shoulder.

The following listings were considered in light of the objective evidence: 12.05, 12.06 and 12.09. Based on the above objective medical evidence, Claimant does not meet or medically equal the criteria of a listing.

In addition, the objective clinical evidence does not show that Claimant has a 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. She does not meet the duration requirement because her impairments cannot be expected to result in death or have not lasted or cannot be expected to last for a continuous period of not less than 12 months. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 3.

Before Step 4, the Administrative Law Judge must determine Claimant's residual functional capacity to perform the requirements of her past relevant work. Here, Claimant has a work history as home health care aide. Working as a home health care

aide, as described by Claimant at hearing, would be considered light to medium work. Claimant testified that she can do the following activities: walk short distances without assistance; grip/grasp with her left hand but right hand is limited; sit without issue; lift/carry up to 10 pounds with her left (less with her right); stand; and can bend and squat with some difficulty. The objective findings do not show any physician imposed limitations.

The question here is whether Claimant has the ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. Claimant contends that she is unable to work due to poor memory, lack of concentration and the inability to tolerate working with others.

In addition, Claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the objective medical records. Accordingly, the undersigned finds that Claimant's medically determinable impairments could not reasonably be expected to cause the alleged symptoms.

Claimant was diagnosed with anxiety and depression. Claimant has some impairments functioning in a structured setting and requires medication. However, the medical evidence also shows that she has the ability to understand, carry out, and remember simple instructions. Claimant's use of judgment was not impaired. Claimant also can respond appropriately to supervision, co-workers and usual work situations. In addition, Claimant possesses the ability to deal with normal changes in a routine work setting.

However, the undersigned finds that Claimant may not be able to perform her past relevant work as a home health care aide. Because the record evidence shows that Claimant is unable to do any past relevant work, the analysis proceeds to the fifth and final step.

At Step 5, this Administrative Law Judge must determine whether or not Claimant has the residual functional capacity to do any other work in the national economy considering his or her residual functional capacity, age, education, and work experience. At this point, the burden of proof shifts to the Department. The entire record shows that Claimant is capable of light employment on a continued basis.

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. Under the Medical-Vocational guidelines, a person closely approaching advanced age (age 52), with a limited education or less (7th grade through 11th grade or less) and an unskilled work history who is capable of light is not considered disabled pursuant to Vocational Rule 202.10.

Claimant has not satisfied the burden of proof to show by competent, material and substantial evidence that she has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, there is no objective medical evidence to substantiate Claimant's assertion that her alleged impairment(s) are severe enough to reach the criteria and definition of disability.

Accordingly, this Administrative Law Judge concludes that Claimant is not disabled.

Because Claimant does not meet the definition of disabled above and because the evidence of record does not show that Claimant is unable to work for a period exceeding 90 (ninety) days, Claimant is not disabled for purposes of the SDA program.

The Department has established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Claimant was not eligible to receive SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it acted in compliance with Department policy when it denied Claimant's application for SDA benefits

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

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **10/13/2015**

Date Mailed: **10/13/2015**

CAP/las

NOTICE OF APPEAL: 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.

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).

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

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

cc:

