

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-003044
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: April 8, 2015
County: Jackson

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 April 8, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Certified Peer Support Specialist [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Assistance Payment Supervisor [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

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

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 December 5, 2014, Claimant applied for SDA.
- (2) On February 23, 2015, the Medical Review Team (MRT) denied Claimant's SDA application. (Dept. Ex A, pp 1-6).
- (3) On February 24, 2015, the Department sent Claimant notice that her application was denied.
- (4) On March 5, 2015, Claimant filed a hearing request to contest the Department's negative action.
- (5) Claimant has a history of epilepsy, brain hemorrhage, arthritis, asthma, bipolar disorder, hemorrhoids, post-traumatic stress disorder, depression, schizophrenia, paravertebral muscle spasms, intervertebral disc prolapse, lumbar radiculopathy, sciatica, anxiety, panic attacks, low back strain, subconjunctival hemorrhage, anal fissure, lipoma, skin lesions, cellulitis,

acute bronchitis, migraines, chronic back pain, morbid obesity, and scoliosis.

- (6) Claimant is a 33 year old woman born on [REDACTED].
- (7) Claimant is 5'5" tall and weighs 253 lbs.
- (8) Claimant has a high school equivalent education.
- (9) Claimant last worked in 1999.
- (10) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

"Disability" is:

. . . 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. [SDA = 90 day duration].

A set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

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/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/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/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/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. 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).

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).

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).

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 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/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 his/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/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that she has not worked since the 1990's. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. 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.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with epilepsy, arthritis, asthma, bipolar disorder, hemorrhoids, post-traumatic stress disorder, depression, schizophrenia, paravertebral muscle spasms, intervertebral disc prolapse, lumbar radiculopathy, sciatica, anxiety, panic attacks, low back strain, subconjunctival hemorrhage, anal fissure, lipoma, skin lesions, cellulitis, acute bronchitis, migraines, chronic back pain, morbid obesity, and scoliosis. It must be noted 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 employment can be achieved, a finding of not disabled must be rendered. Nevertheless, Claimant's impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3 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. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

At Step 5, the burden of proof shifts to the Department to establish that Claimant does have residual function capacity. 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.

A review of the medical records reveals multiple instances of Claimant exhibiting drug seeking behavior during emergency department visits. In addition, although Claimant reported a brain hemorrhage, there was no medical documentation supporting the diagnosis.

Claimant underwent a psychiatric evaluation on [REDACTED], by [REDACTED]. Claimant was alert and oriented times 3. She was pleasant and cooperative. She had poor hygiene. Her talk was relevant and coherent, but rather slow. She had no clear delusions or thought disorder noted. She presented with a long history of seizures with somewhat vague symptoms of anxiety, mood swings, and auditory hallucinations possibly related to the seizures. While it was unclear about the diagnosis, the psychiatrist opined she may benefit from medications targeting anxiety and hallucinations. Diagnosis: Axis I: Depressive disorder; Anxiety disorder; Psychotic disorder; Axis III: Partial epilepsy without intractable epilepsy; Axis IV: Educational problems, occupational problems, problem with primary support group, problem related to social environment other psychosocial and environmental problems; Axis V: GAF=[REDACTED]

On [REDACTED], Claimant presented to the emergency department with a headache and back pain. Claimant was alert and oriented. Range of motion was intact for all extremities. No muscle weakness. She walked without difficulty. The lower back exam showed good range of motion with normal flexion and extension and good rotation both right and left. There was no evidence of lower extremity weakness. She was able to dorsiflex ankle and plantar flex with good strength. Normal Patrick test. Normal straight leg test. Mood and affect normal. The examining physician indicated he explained to Claimant that he could not give her Ultram due to her history of seizure disorder and that the emergency department does not prescribe narcotic medications for chronic issues.

On [REDACTED], Claimant presented to the emergency department with a headache. She complained the headache was constant and the pain radiated to her upper back. She also stated her right upper extremity was somewhat sore. She had no loss of strength, sensation, fever, trouble urinating or any other complaints. She reported she was employed and an everyday smoker. She had a normal mood, affect and cognition. She was diagnosed with a headache and discharged home.

On [REDACTED], Claimant presented to the emergency department complaining of pain in her right leg and weakness. X-ray of the right hip was unremarkable. She was diagnosed with pain in her right lower limb. Claimant was discharged in stable condition and left ambulatory with a steady gait.

On [REDACTED], Claimant presented to the emergency department after a fall on the ice and right hip pain. Claimant complained that her tramadol does not manage and take care of her pain. She was administered Toradol for pain and discomfort and given a prescription of Naprosyn to be taken 3 times a day in conjunction with her Tramadol.

On [REDACTED], Claimant presented to the emergency department with a headache. Claimant stated she had the headache for four days when she was helping a friend move and felt she may have strained her neck. She stated the pain was on the left side including headache on the frontal left side and it was exactly the same as her usual headache pain, however this time it was associated with neck pain. She stated it is worse with coughing, and was concerned that meningitis can present as neck pain and a headache. She reportedly tried ibuprofen, muscle relaxers, ice, hot shower and Neurontin for her headache, and none of those relieved the pain. Review of systems she admitted to neck stiffness, occasional dizziness, headache, and photophobia. She

denied nausea, vomiting, changes in vision, worse pain with chewing, pain at her temple, fever, chills, recent illness, recent sick contacts, shortness of breath or chest pain. The physician noted that at the time of examination, Claimant was calmly reviewing her cellphone with her right hand while clutching her left hand to her head, and asked for a sandwich and something to drink as the doctor left the room.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least sedentary duties. Therefore, the Administrative Law Judge finds that Claimant failed to provide the necessary objective medical evidence to establish that she is mentally or physically incapable of doing basic work activities. Moreover, there is no evidence that Claimant has a severe impairment that meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant 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, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows she can perform sedentary work. Under the Medical-Vocational guidelines, a younger individual age 18 - 49 (Claimant is 33 years of age), with a high school equivalent education and no work history is not considered disabled pursuant to Medical-Vocational Rule 201.24. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.


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

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 was acting in compliance with Department policy when it denied Claimant's application for State Disability Assistance benefits.

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

It is SO ORDERED.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human
Services

Date Signed: **5/19/2015**

Date Mailed: **5/19/2015**

VLA/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:

