

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-017620
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: December 17, 2015
County: Allegan

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 17, 2015, from Lansing, Michigan. The Claimant personally appeared and testified. The Department of Health and Human Services (Department) was represented by Eligibility Specialist [REDACTED] and Family Independence Manager [REDACTED].

ISSUE

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

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 June 26, 2015, Claimant filed an application for SDA benefits alleging disability.
2. On August 11, 2015, the Medical Review Team (MRT) denied Claimant's application for SDA based on lack of duration. (Dept Ex. A, pp 3-5).
3. On August 31, 2015, the Department mailed Claimant a Notice of Case Action notifying her that her application for SDA had been denied. (Dept Ex. A, pp 1-2).
4. Department's Exhibit A, pages 1-173 are Claimant's medical records submitted to the Medical Review Team. (Dept Ex. A, pp 1-173).
5. On September 21, 2015, Claimant submitted a request for hearing to contest the Department's negative action. (Dept Ex. A, p 1B).

6. Claimant has a history of posttraumatic stress disorder, morbid obesity, cellulitis, bipolar disorder, anxiety disorder, sleep apnea, shortness of breath, mood disorder, arthritis in the left knee and severe edema. Claimant stated the edema in her left leg fluctuates but it is worse when she does not keep her leg elevated. Claimant testified she must use her inhaler when walking from her chair to the bathroom. She also indicated she has to limit her walking and keep her leg elevated due to the edema. (Testimony).
7. On March 5, 2015, Claimant underwent a disability evaluation by her treating physician. Claimant weighed 439 pounds and had a BMI of 70 and over. Claimant stated she could not stand for any length of time and could not walk more than a city block before getting short of breath. Claimant had significant pain and swelling in her bilateral lower extremities from chronic venous insufficiency. The physician indicated Claimant must often elevate her legs above the level of her heart during the day to alleviate the swelling. For this reason, the physician opined, Claimant cannot sit for long periods of time. Claimant's upper extremities are also limited due to swelling and decreased range of motion from her super morbid obesity. Claimant must take a 2-hour nap each afternoon due to medication side effects. Claimant sleeps in a recliner because of orthopnea when lying down. (Dept Ex. A, pp 148-149).
8. Claimant's treating physician completed the Medical Assessment of Ability to do Work-Related Activities (Physical) on March 5, 2015. Based on Claimant's super morbid obesity, severe bilateral lower extremity edema and shortness of breath with any activity, the physician indicated Claimant could not stand or walk for any length of time without interruption, but could sit for half an hour without interruption. During an 8-hour workday, Claimant could sit for 2 hours, and stand or walk for half an hour. She can occasionally lift and carry 10 pounds based on severe shortness of breath with activity. The physician noted Claimant is able to frequently do simple grasping and fine manipulation, and occasionally push and pull 20 pounds. Claimant can never bend, twist, squat, kneel, climb stairs or ladders, crouch, crawl or stoop. She can occasionally reach above shoulder level. Her balance is also affected by her impairments. (Dept Ex. A, pp 160-162).
9. On July 10, 2015, Claimant saw her treating physician concerning follow up on her medications and a weight check. Claimant stated her depression is ongoing and worsening since her divorce from her abusive husband and not being around her mother with whom she quarrels. Claimant indicated she believed her IUD was to blame. The physician noted that Claimant's anxiety was stable on Ativan and that she had a normal mood and affect. (Dept Ex. A, p 141-142).
10. On September 10, 2015 Claimant presented to her treating physician for a medication follow up, a weight check and knee pain. She had lost some weight from the last visit. X-rays revealed moderate bilateral knee osteoarthritis. (Claimant Exhibit pp 40-43, 64-66).

11. On October 14, 2015 Claimant saw her treating physician with complaints of shortness of breath, foot and leg swelling. She was diagnosed with bilateral leg edema, cellulitis of the lower extremities, snoring and morbid obesity. Her legs had a warm red macular rash circumferentially with open excoriations and small blisters. (Claimant Exhibit pp 33-39).
12. On October 22, 2015, Claimant was admitted to the hospital with cellulitis of the lower extremities, chest pain and shortness of breath. Her cardiac enzymes and EKG were normal. No evidence of deep vein thrombosis. She was discharged on October 23, 2015. (Claimant Exhibit pp 1-27, 44-63, 67-72).
13. On October 29, 2015, Claimant followed up with her treating physician concerning her hospital visit on October 22, 2015. Claimant stated her symptoms had not changed and her legs remained red and swollen. On examination, Claimant had 1+ pitting edema to bilateral lower extremities, redness, abdominal firmness and edema to bilateral posterior thighs. The edema was noted to be worse in her bilateral lower extremities and abdomen. (Claimant Exhibit pp 28-32).
14. On November 5, 2015, Claimant participated in a Sleep Study. Claimant was diagnosed with sleep disordered breathing of the obstructive type that is severe in nature. It was successfully treated with positive bilevel pressure. There was a noted significant REM rebound. A bipap machine was prescribed. (Claimant Exhibit pp 73-81).
15. Claimant is a [REDACTED]-year-old woman with a date of birth of [REDACTED]. She is 5'5 and weighs 381 pounds. She has a high school education. She last worked in January, 2013. (Testimony).
16. Claimant had applied for social security benefits at the time of this 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 413.913. 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 (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 an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to 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 3 to Step 4. 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 945(a)(1). An individual's residual

functional capacity assessment is evaluated at both Steps 4 and 5. 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).

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

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant has not worked since January, 2013. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual 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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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 disability due to of posttraumatic stress disorder, morbid obesity, cellulitis, bipolar disorder, anxiety disorder, sleep apnea, shortness of breath, mood disorder, arthritis in the left knee and severe edema. As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Claimant has presented medical evidence of severe edema, morbid obesity and cellulitis indicating that she does have physical limitations on her ability to perform basic work activities. The medical evidence has established that 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 continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to of posttraumatic stress disorder, morbid obesity, cellulitis, bipolar disorder, anxiety disorder, sleep apnea, shortness of breath, mood disorder, arthritis in the left knee and severe edema.

Based on Claimant's BMI of 70 and over, the effects of obesity must be considered. Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal, respiratory and cardiovascular systems. Disturbance of these systems can be a major cause of disability in individuals with obesity. Disability Evaluation Under Social Security Listings 1.00Q and 3.00(I). The combined effects of obesity with musculoskeletal and respiratory impairments can be greater than the effects of each of the impairments considered separately. Listings 1.00Q and 3.00(I).

Obesity may also affect the cardiovascular system because of the increased workload the additional body mass places on the heart. Obesity may make it harder for the chest and lungs to expand. This can mean that the respiratory system must work harder to

provide needed oxygen. This in turn would make the heart work harder to pump blood to carry oxygen to the body. Because the body would be working harder at rest, its ability to perform additional work would be less than would otherwise be expected. Thus, the combined effects of obesity with cardiovascular impairments can be greater than the effects of each of the impairments considered separately. 4.00(I)(1).

A review of the medical evidence shows Claimant has also been diagnosed with chronic venous insufficiency. Chronic venous insufficiency of a lower extremity is incompetency or obstruction of the deep venous system and extensive brawny edema (see 4.00G3) involving at least two-thirds of the leg between the ankle and knee or the distal one-third of the lower extremity between the ankle and hip. 4.11.

Listings 1.00 (musculoskeletal system), 3.00 (respiratory system), 4.00 (cardiovascular system) and 12.00 (mental disorders) were considered in light of the objective evidence. As indicated by Claimant's treating physician, it is the combination of her super morbid obesity, severe bilateral lower extremity edema and shortness of breath that have caused the physical limitations on her ability to perform basic work activities.

Based on the foregoing, it is found that Claimant may be considered presently disabled at the third step. Claimant appears to meet and equal Listing 4.11. Therefore, this Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that the Claimant meets the requirements of a listing.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, she must also be found "disabled" for purposes of SDA benefits.

DECISION AND ORDER

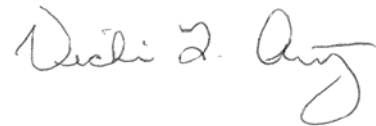
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Claimant is not currently disabled for SDA eligibility purposes.

Accordingly, the Department's decision is **REVERSED**, and it is Ordered that:

1. The Department shall process Claimant's June 26, 2015, SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The Department shall review Claimant's medical condition for improvement in January, 2016, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.



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

Date Mailed: **1/11/2016**

VA/nr

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:

