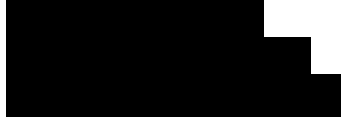


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 15-020589
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: January 27, 2016
County: Muskegon

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 January 27, 2016, from Lansing, Michigan. Claimant personally appeared and testified. The Department was represented by Family Independence Manager [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 June 2, 2015, Claimant applied for SDA.
- (2) On October 23, 2015, the Medical Review Team (MRT) denied Claimant's SDA application. (Dept Ex. A, pp 60-63).
- (3) On October 28, 2015, the Department issued a Notice of Case Action to Claimant informing her that her application for SDA had been denied. (Dept Ex. A, pp 64-65).
- (4) On November 4, 2015, Claimant filed a hearing request to contest the Department's negative action. (Dept Ex. A, pp 66-67).
- (5) Claimant has a history of chronic obstructive pulmonary disease, headaches, asthma, chronic bronchitis, obesity, bipolar-manic depression, and permanent disability of the right leg due to right knee surgery in 2013.

- (6) On February 22, 2015, Claimant presented to the emergency department complaining of a cough and blurred vision. Claimant was given a DuoNeb treatment. She was also given Tessalong Perles, ibuprofen 800mg and a dose of Flexeril 10mg and a tablet of Phenergan 25mg. She was sent home with Phenergan with dextromethorphan cough syrup. Impression: Acute bronchitis with a history of chronic obstructive pulmonary disease and asthma. (Dept Ex. A, pp 29-30).
- (7) On October 8, 2015 Claimant underwent a psychological evaluation on behalf of the Department. Claimant was on time and appeared to be honest and direct in her responses without evidence of malingering or exaggeration of pathology. There were no posture problems noted but she did walk slowly with a limp. She was cooperative, but rather subdued, depressed looking and tearful at times. The examining psychologist opined that the potential for Claimant becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded. She may be able to function in a work situation that does not involve extensive physical exertion, standing or walking, pending her compliance with psychiatric treatment. (Dept Ex. A, pp 55-59).
- (8) Claimant's June 26, 2015 MRI of her right knee revealed a relatively stable abnormal morphology and signal of the anterior cruciate ligament without evidence for a discrete ACL tear; absence of the lateral meniscus likely postsurgical in nature with severe degeneration and thinning of the articular cartilage in the lateral femoral tibial compartment; free edge tear of the medial meniscal body and posterior horn medial meniscus; mild interval decrease in size of a clot below focus of hyperintense T2-weighted signal along the undersurface of the medial patellar retinaculum; and a small joint effusion. (Dept Ex. A, pp 3-4).
- (9) On June 11, 2015, Claimant followed up with her treating physician regarding mood disorders, asthma and musculoskeletal pain. Claimant reported that functioning was very difficult. She presented with anxious/fearful thoughts, compulsive thoughts, depressed mood, difficulty falling asleep, difficulty staying asleep, excessive worry, fatigue, feelings of guilt, racing thoughts, restlessness and thoughts of death or suicide but denied decreased need for sleep, easily startled, increased energy, hallucinations, decreased libido, loss of appetite and paranoia. The mood disorders are aggravated by conflict or stress and lack of sleep. The mood disorders are associated with chronic pain, sweating, urinary frequency and weight gain. The pain in her knee is constant and worsening. The pain is aggravated by bending, climbing (and descending) stairs and walking. The pain is relieved by brace/splint, elevation, OTC medicines and rest. Associated symptoms include decreased mobility, difficulty initiating sleep, joint instability, joint tenderness, limping, locking,

nocturnal awakening, nocturnal pain, spasms, swelling and weakness. Both her knees are painful. The right knee is worse. The brace will not fit if her knee is swollen. She was referred for x-rays and an MRI. Her back was in spasm. She had tenderness in her left knee and swelling in the right. She had poor judgment. (Dept Ex. A, pp 33-37).

- (10) Claimant is a [REDACTED] year old woman born on [REDACTED]. She is 5'3" tall and weighs 217 pounds. She has a college education. She last worked in 2013 as a fork lift operator.
- (11) Claimant was appealing the denial of Social Security disability at the time of the hearing.
- (12) Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.
- (13) Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

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.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

"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].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

The credible testimony and medical records submitted at hearing verify Claimant was legally disabled for ninety (90) days. In particular, the psychologist the Department

referred Claimant to for evaluation opined that the potential for Claimant becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded. She may be able to function in a work situation that does not involve extensive physical exertion, standing or walking, pending her compliance with psychiatric treatment. As such, the Department's denial of SDA pursuant to Claimant's June 2, 2015 SDA application cannot be upheld.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the SDA benefit program.

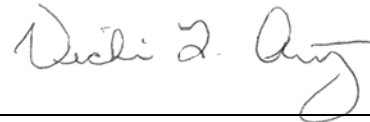
DECISION AND ORDER

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

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

1. The Department shall process Claimant's June 2, 2015 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 February, 2017, 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.



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

Date Mailed: **2/19/2016**

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:

