

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

SOAHR Docket No. 2008-22237REHD

DHS Req. No: 2002-20756

Case No: [REDACTED]

Load No: [REDACTED]

[REDACTED]
Claimant

RECONSIDERATION DECISION ON REMAND

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Claimant.

ISSUE

Did the Administrative Law Judge properly determine that the Claimant was not disabled and medically eligible for Medical Assistance (MA-P) Retroactive Medical Assistance (Retro MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACTS

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

1. On August 20, 2007, ALJ Michelle Howard issued a Hearing Decision in which the ALJ upheld the Department of Human Services' (DHS) denial of Claimant's application of November 3, 2005, for MA-P, Retro MA-P, and SDA.
2. After appeal and upon order of the Circuit Court for the Third Judicial Circuit of Wayne County, a Stipulated Order to Remand to the State Office of Administrative Hearings and Rules (SOAHR) was entered on May 8, 2008. The court ordered that the above-captioned matter be remanded for rehearing/reconsideration.
3. On August 8, 2009, SOAHR granted the Claimant's Request for Rehearing/Reconsideration and issued an Order for Reconsideration.

4. Findings of Fact 1-9 from the Hearing Decision, mailed on August 21, 2007, are hereby incorporated by reference.
5. Claimant has significant limitations involving sitting, standing, walking, lifting and squatting.
6. Claimant has moderately severe "pins and needle" pain in her right leg and left arm. Claimant also has stomach cramps.
7. In a medical report by an examining physician, the physician noted Claimant had diabetes mellitus which was probably not well controlled. He indicated that Claimant may have early sensory diabetic neuropathy. He also indicated that Claimant had chronic recurrent lower back, right hip and right leg pain.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 4000.105; MSA 16.490 (15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.50, the Family Independence Agency uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance 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

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 a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental

health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920 (c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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 aptitude necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, 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).

The Residual Functional Capacity (RFC) 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...20 CFR 416.945 (a).

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.

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 reflects 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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability... 20 CFR 416.994 (b)(4)(iv).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920 (b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920 (c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290 (d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920 (e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, §§ 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920 (f).

The ALJ correctly found at Step 1 that the Claimant was not ineligible for disability because she was not substantially gainfully employed. The ALJ correctly considered the Claimant's disability at Step 2.

The ALJ erred at Step 2 in finding that the Claimant did not have a severe impairment or combination of impairments which have lasted or are expected to last 12 months or more or result in death.

The ALJ correctly found at Step 3 that the Claimant alleged impairment did not meet or equal a listing.

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Based on the medical evidence and Claimant's work history, Claimant is incapable of performing her past relevant work.

Claimant is an individual of advanced age. 20 CFR 416.963. Claimant has a high school education. 20 CFR 416.964. Claimant's previous work was unskilled. Federal rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1 Rule 201.12, Claimant is disabled for the purposes of the Medical Assistance and State Disability assistance programs.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Administrative Law Judge erred when she found that Claimant was not medically eligible for MA and SDA effective July 2005.

IT IS THEREFORE ORDERED:

That the Administrative Law Judge's decision mailed August 21, 2007, on the issue of Medical Assistance and State Disability Assistance is REVERSED.

That the Department is to initiate a review of the application of September 9, 2005, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform the Claimant of the determination in writing. The case shall be reviewed in February 2010

/s/
Rhonda Craig
Administrative Law Judge
for Michigan Department of Human Services

Date Signed: May 5, 2009
Date Mailed: May 7, 2009

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***** NOTICE *****

The Appellant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.