

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

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IN THE MATTER OF:

SOAHR Docket No. 2009-25661 REHD  
DHS Reg. No. 2009-20238

██████████

Claimant

\_\_\_\_\_ /

**RECONSIDERATION DECISION**

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

**ISSUE**

Did the Administrative Law Judge err when he determined the Claimant was not disabled for Medical Assistance (MA-P), retro Medical Assistance (retro MA-P), and State Disability Assistance (SDA)?

**FINDINGS OF FACTS**

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

1. On April 1, 2009, Administrative Law Judge William A. Sundquist issued a Hearing Decision in which the ALJ affirmed the Department of Human Services' (DHS) denial of Claimant's August 1, 2008 application for retro MA-P and SDA.
2. On April 21, 2009, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a request for Rehearing/Reconsideration submitted by Claimant's authorized representative ████████.
3. On July 13, 2009, SOAHR granted Claimant's request for reconsideration and issued an Order of Reconsideration.
4. Findings of Fact 2-16 from the Hearing Decision, mailed on April 1, 2009 are hereby incorporated by reference.

## **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 mental 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 ██████████, published by the ██████████ ... 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 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).

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 416.920(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 the Claimant not ineligible for disability at Step 1 because the Claimant was not engaged in substantial gainful activity when she applied for Medical Assistance. Thus, because the Claimant was not engaged in substantial gainful activity, the ALJ correctly reviewed the Claimant's eligibility at Step 2.

On June 18, 2008, the Claimant underwent an MRI of the lumbar spine and an MRI of the left hip. ██████████ noted that the lumbar spine showed moderate spondylosis with degenerative changes contributing to chronic acquired L2-3, L3-4, and borderline L4-5 central spinal stenosis with associated lateral recess and focal disc herniation. ██████████ further noted that the left hip test suggested acute exacerbation of chronic osteoarthritis with associate joint effusion. Department exhibit p. 6.

On ██████████ performed a lumber spine x-ray on the Claimant and diagnosed degenerative disk disease and posterior facet disease. Department exhibit p. 7. ██████████ also noted that the Claimant's pain complaints and symptoms had been present for years, but had grown a bit worse in the last 6 to 8 months. Department exhibit p. 8.

On August 1, 2008, the Claimant applied for MA-P, retro MA-P, and SDA. Department exhibit p. 1.

The Claimant's August 4, 2008, DHS 49-F form, states that the Claimant was formerly employed as an automotive production worker from March until June of 1995, and the former owner of two restaurants; one from 1991 to 1996 and the other from 1992 to 2006. Department exhibit p. 63.

In the ALJ's Hearing Decision, mailed April 1, 2009, and in the evidentiary record, it is also noted that Claimant was a former pizza worker before the onset of her impairments.

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On ██████████, DHS received a DHS-49 Medical Exam Report, completed by ██████████, who last examined Claimant on July 25, 2008. Indicated that the Claimant was limited in that she could not, bend twist or stand for prolonged periods of time. ██████████ also stated that the Claimant could not lift more than 20 pounds at a time. Department exhibit pp. 15-16.

On August 21, 2008, the Claimant was evaluated by ██████████. ██████████ noted that the Claimant's spine showed evidence of spinal stenosis at L3-4 and L4-5 and osteoarthritis with joint effusion on the left side. Department exhibit pp. 31-32.

On ██████████, the Claimant's primary care physician, ██████████, received a letter from ██████████ providing notification that it was also treating the Claimant. Department exhibit p. 29.

On September 2, 2008, the DHS Medical Review Team (MRT) denied Claimant's application because the Claimant could perform other work. Department exhibit p. 1.

On September 12, 2008, ██████████ completed a DHS-49 Medical Examination Report. ██████████ noted that he had last examined the Claimant on June 25, 2008, and that Claimant would be unable to work until undergoing surgery. Department exhibit p. 3.

On September 17, 2008, Claimant met with ██████████ for a surgical consultation whereby ██████████ diagnosed Claimant with a somewhat congenitally narrowed canal with degenerative disk changes at 2-3, 3-4, 4-5, and 5-6, causing moderately severe stenosis. Department exhibit p. 4.

On October 2, 2008, the Claimant was admitted to ██████████, and then subsequently discharged on October 4, 2008 after undergoing a posterior lumbar decompression with L3-L4 laminotomy and fusion L2 to S1, with ██████████ interspinous device and bone graft. The procedure was performed by ██████████, ██████████ noted that Claimant did well after the surgery. Department exhibit pp. 2; 7-8.

On October 3, 2008, the State Hearing Review Team (SHRT) issued a decision in which it denied Claimant's application, finding that Claimant was capable of performing other sedentary and light work. Department exhibit p. 75.

On November 12, 2008, the Claimant was examined post-operatively. The Claimant complained of pain in her left hip and leg as similar to pain she experienced before the procedure.

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On ██████████, the Claimant was seen by ██████████ in preparation for a second surgical procedure to treat the Claimant's leg and back pain. Department exhibit p. 2.

On ██████████, after being admitted to ██████████, the Claimant underwent a procedure performed by ██████████. The procedure involved a posterior lumbar decompression with L2 to S1 decompressive laminectomy; posterior lumbar fusion – L2 to S1 – with Incompass pedicle; bony arthrodesis – L2 to S1; and removal of previous aspen interspinous device. There were no complications noted in the procedure. Department exhibit pp. 8-9.

On ██████████, after her surgery ██████████ evaluated the Claimant ██████████ indicated in his report that the Claimant had a prior history of hypertension and anxiety and was being closely monitored. Department exhibit pp. 4-5.

On ██████████, the Claimant was discharged from ██████████ ██████████ described Claimant as doing well after surgery and noted an improvement in her leg symptoms.

On February 5, 2009, a hearing was held before Administrative Law Judge William A. Sundquist on the issue of whether Claimant had a medically established disability.

On February 23, 2009, the SHRT again reviewed Claimant's application after new evidence was submitted. After the review, the SHRT determined that Claimant was not disabled and was ineligible for Medical Assistance. The SHRT found that the Claimant's impairments lacked the requisite duration, and that the Claimant was capable of performing other sedentary and light work. State Hearing Review Team Decision pp. 1-2.

In order to establish disability at Step 2 the evidence must show that the Claimant has impairment or combination of impairments which significantly limit her ability to perform basic work for 12 continuous month's .Thus the Claimant must meet both a severity and a durational requirement at this step.

In the instant case, Claimant has provided medical evidence from acceptable sources which documents her spinal stenosis, osteoarthritis, and history of hypertension and anxiety. These impairments taken with the statements of doctors regarding Claimant's functional limitations likely establish that Claimant has a severe combination of impairments. However, the evidence does not show that the impairments lasted for 12 continuous months.

Both ██████████ stated in their Medical Examination Reports that the Claimant was either limited or was unable to work until corrective surgery was performed. The Claimant complained of post surgical. However the record is devoid of

any evidence documenting the Claimant's pain or limitations following the second procedure. In fact, on ██████████ – less than a year after the Claimant's application or first documented evidence of impairment – ██████████, the Claimant's surgeon, noted that the Claimant to be doing well and showing an improvement in leg symptoms.

The evidence shows that the Claimant's impairments do not meet the requisite durational requirement. The ALJ correctly found that the Claimant was not disabled at Step 2. The finding of a severe impairment at Step 2 is *de minimus* standard. The evidence shows that the Claimant impairment although no severe meet the de minimus standard. The ALJ incorrectly proceeded to Step 5 and incorrectly omitted Steps 3 and 4. of the sequential analysis.

The medical evidence provided shows that the Claimant was diagnosed with a back impairment. This impairment could arguably meet or equal **1.00, Musculoskeletal System** . The requirements of listing 1.00 are as follows:

**E. Examination of the Spine.**

1. *General.* Examination of the spine should include a detailed description of gait, range of motion of the spine given quantitatively in degrees from the vertical position (zero degrees) or, for straight-leg raising from the sitting and supine position (zero degrees), any other appropriate tension signs, motor and sensory abnormalities, muscle spasm, when present, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examination table. Inability to walk on the heels or toes, to squat, or to arise from a squatting position, when appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs, or both upper and lower arms, as appropriate, at a stated point above and below the knee or elbow given in inches or centimeters. Additionally, a report of atrophy should be accompanied by measurement of the strength of the muscle(s) in question generally based on a grading system of 0 to 5, with 0 being complete loss of strength and 5 being maximum strength. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip and pinch strength.

More specifically, in **1.04, Disorders of the Spine**, the listing provides:

**1.04 Disorders of the spine** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

**A.** Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

**OR**

**B.** Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

**OR**

**C.** Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

The evidence presented shows that the Claimant had spinal stenosis and osteoarthritis. Neither of those impairments meets, nor equals the requirement of the listing. The requisite documentation, which is specifically discussed above, is absent. The Claimant is not found disabled at Step 3. Therefore, the evaluation must continue to Step 4.


According to the Claimant's DHS 49-F form and the Hearing Decision, the Claimant was formerly employed as an automotive production worker, restaurant manager and owner, and again in the food industry as a pizza worker. I find that the Claimant's former work was light and sedentary work.

The evidence presented shows that Claimant had some physical limitations prior to her back surgery. However, Claimant has presented no evidence to show that her post surgical physical limitations would prevent her from performing her former light and sedentary work. The burden is on the Claimant at Step 4 to produce sufficient evidence, from acceptable medical sources, which shows that her impairments prevent her from performing her former work. The Claimant has not met this burden. Therefore, I find that the Claimant has the Residual Functional Capacity to perform her former work. The Claimant is ineligible for disability at Step 4. Despite this finding, the Claimant's eligibility will be considered at Step 5

At Step 5, the Department has the burden of establishing that despite the claimant's limitations, she has the Residual Functional Capacity to perform work in the national economy. Residual Functional Capacity is defined as what the claimant can do despite her limitations. Residual Functional Capacity also includes an assessment of the claimant's physical and mental abilities. The physical demands of jobs in the national economy are classified as sedentary, light, medium, heavy, or very heavy. The more physically demanding classification includes all less demanding classifications. For example, a classification of very heavy includes all other less physically demanding classifications. Sedentary work is defined as work which involves the lifting or carrying of files, ledgers, small tools, and similar items. Sedentary work presumptively includes sitting but also includes some necessary walking and standing. Light work involves the lifting of no more than 20 pounds at a time and the frequent lifting or carrying of objects weighing less than 10 pounds. Light work may involve significant walking or standing. Absent a loss of dexterity or other limiting factors, typically those who can do light work can do sedentary work. Medium work involves the lifting of objects of 50 pounds or less with frequent lifting or carrying of objects which weigh 25 pounds or less. A person who can do medium work can typically do light and sedentary work. Heavy work involves the lifting of 100 pounds or less with frequent lifting of objects weighing 50 pounds or less. People who can do heavy work can typically do medium, light, and sedentary work. Very heavy work involves the lifting of objects weighing 100 pounds or more and the frequent lifting or carrying of objects weighing 50 pounds or more. A person who can do very heavy work can typically do heavy, medium, light, and sedentary work.

The evidence presented shows that Claimant is a 51 year old individual with a high school degree and a past history of semi-skilled, light and sedentary work. The objective evidence in the record does not show that Claimant's impairments would prevent her from performing light and sedentary work. Given Claimant's vocational profile, the applicable vocational rules render Claimant not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 202.15. Therefore, Claimant is also ineligible for disability at Step 5.

Because the Claimant was not found disabled for each of the three (3) months prior to the date of her application, she was ineligible for retro MA-P. The MRT, SHRT, and ALJ all correctly denied retro MA-P.

  
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The Claimant applied for State Disability Assistance or SDA. Per PEM 261, a person is disabled for SDA purposes if he/she:

- Receives other specified disability-related benefits or services; 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; or
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

The Claimant is not receiving any other disability benefits, and lacks the required documentation to be found disabled. Therefore, the ALJ correctly found the Claimant ineligible for SDA.

**DECISION AND ORDER**

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge did not err when he found that the Claimant was not disabled.

**IT IS THEREFORE ORDERED** that:

The Administrative Law Judge's decision mailed April 1, 2009, is  
AFFIRMED.

/s/\_\_\_\_\_

Martin D. Snider  
Administrative Law Judge  
for Michigan Department of Human Services

cc:



Date Signed: August 28, 2009  
Date Mailed: August 31, 2009

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**\*\*\*Notice\*\*\***

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