

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-42166
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 27, 2012
County: Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

AMENDED HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on June 27, 2012 from Walled Lake, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED] the Claimant's Authorized Hearing Representative (AHR). Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

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

1. On June 10 2010, Claimant applied for MA-P and retro MA-P to March 2010.
2. On July 23, 2010, the Medical Review Team denied Claimant's request.
3. The Department did not provide the Claimant's AHR a notice of the Notice of Case Action, dated 7/29/12, denying the Claimant MA-P application. Exhibit 1
4. On October 7, 2010 Claimant's submitted to the Department a timely hearing request. Exhibit 2.

5. On May 16, 2012 SHRT found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on July 3, 2012, accepting new evidence submitted on the Claimant's behalf at the hearing.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on 7/3/12, and SHRT denied disability on August 13, 2012.
8. Claimant is [REDACTED] years old with a birth date of [REDACTED].
9. Claimant completed education through the 11th grade.
10. Claimant has employment experience (last worked 2005) as a home care and private duty aide.
11. Claimant's limitations have lasted for 12 months or more.
12. Claimant suffers from high blood pressure, back pain, stomach pain, peptic ulcer and depression.
13. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

CONCLUSIONS OF LAW

MA-P is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA-P pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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.

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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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. 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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of 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;

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.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(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, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then 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 step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in step one as the evidence demonstrated that Claimant was not working, and step two, that Claimant has a serious impairment that limits her ability to perform basic work activities.

As regards step three of the sequential evaluation it is determined that Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listings 5.02 Gastrointestinal hemorrhaging from any cause requiring blood transfusion (1.04), Disorder of the Spine (12.04), Affective Disorders (Depression). Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with high blood pressure, back pain, stomach pain, peptic ulcer and depression. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treating physician

noted that Claimant would be able to stand and walk for less than 2 hours in an 8-hour day, no limitations on sitting and indicated no lifting of any weight. This physician noted chronic pain. It was also noted that Claimant was not capable of repetitive movements with either her hands/arms or feet/legs. This physician indicated that Claimant would need assistance with basic household chores such as dishwashing, cooking, cleaning and laundry. In addition, from February 2010 through May 2010, medical records established multiple hospital admission for severe abdominal pain. Claimant Exhibit 1.

Claimant testified to the following symptoms and abilities: abdominal pain, spasms in legs, hands and back, can stand 10 minutes, can walk less than one block, cannot lift anything other than a plate and cannot lift a quart of milk, trouble getting in and out of bed, uses a cane, dizziness from high blood pressure, her ability to sleep is limited to 4 hours per night due to pain, constant pain in back, stomach, legs and chest, can sit 20 - 30 minutes, problems with pain when attempting to bend over, gets help with household chores, gets help with grocery shopping, does not drive due to dizziness and spasms in her hands and legs. Lastly, Claimant is tired a lot, fatigued and stays in her home most of the time. The Claimant also has lost 50 pounds since June 2011.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was in home care/private duty aide. This required Claimant to be capable of lifting weight in excess of 20 lbs and performing basic chores. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical or mental activities required to perform any such position and cannot perform past relevant work, and thus a Step 5 analysis is required 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the claimant's impairment(s) prevent the claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

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. 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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 54 years old and, thus, considered to be closely approaching advanced age for MA-P purposes. The Claimant has the equivalent of an 11th grade education with trouble reading. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984).

While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

After a review of the entire record, including the Claimant's testimony and medical evidence presented, it is determined that Claimant's impairments have a major effect on her ability to perform basic work activities. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.09, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated June 10, 2010, and the Claimant's retro application from March 2010, if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for August 2013.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 5, 2012

Date Mailed: September 5, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or

reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF /hw

cc:

