

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-71448
Issue Nos.: 2009
Case No.: [REDACTED]
Hearing Date: November 28, 2012
DHS County: Oakland (03)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, an in-person hearing was conducted from Walled Lake, Michigan, on November 28, 2012. Claimant appeared and testified. [REDACTED] also appeared and testified as a witness on behalf of the Claimant. [REDACTED] appeared as the Claimant's Authorized Representative. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was disabled for purposes of the Medical Assistance ("MA-P")?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits on February 27, 2012.
2. On July 6, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on July 9, 2012.

4. On August 10, 2012, the Department received the Claimant's timely written request for hearing.
5. On October 2, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairments due to Diabetes Type 2, a tear in Achilles tendon, a one-sided weakness (left) due to reaction to blood pressure medicine which may not be permanent, numbness in her hands and feet due to neuropathy associated with diabetes. Pain associated with heart bypass surgery and swelling in leg where vein for bypass was harvested.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5'2" in height; and weighed 207 pounds.
9. The Claimant has a high school education and is working in telephone ads sales for a news paper soliciting advertisements by telephone for the last seven years but has not earned at the substantial gainful employment activity level. The Claimant earns \$9.00 per hour and works 26 hours weekly earning gross pay of \$936. In order to be deemed considered substantial gainful activity the Claimant must have gross earnings of \$1010 per month.

CONCLUSIONS OF LAW

The MA program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, formerly known as the Family Independence Agency, 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").

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). As outlined above, the first step looks at the individual's current work

activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). 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).

In the record presented, the Claimant, based upon her earnings, is not involved in substantial gainful activity as her current earnings do not meet the substantial gainful activity earnings level of \$1010 per month. The Claimant's gross monthly earnings are \$936 per month. Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the claimant's alleged impairment(s) is considered under Step 2. The claimant 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, the Claimant alleges disability due to Diabetes Type 2, a tear in Achilles tendon, a one-sided weakness (left) due to reaction to blood pressure medicine which may not be permanent, numbness in her hands and feet due to neuropathy associated with diabetes. Pain associated with heart bypass surgery and swelling in leg where vein for bypass was harvested. A summation of the Claimant's medical evidence follows.

The Claimant underwent a coronary artery bypass of two arteries on [REDACTED]. The Claimant was hospitalized for 8 days and discharged to home. The medical report discharge summary noted some complaint of right heel pain. The diagnosis was tight gastrocnemius muscle. At the time of discharge the Claimant was afebrile, was in normal sinus rhythm. Incisions were clean, dry and intact without signs of infection and sternum was stable. Prior to the coronary artery bypass procedures the Claimant also had a heart catheterization which was successfully performed.

The Claimant was seen for a consultative examination on [REDACTED]. The exam notes mild to moderate discomfort because of severe pain in chest area and right leg. The exam notes patient is limping while walking. Right lower extremity is a little bit swollen, significant tenderness in the right ankle and right calf area. Exam of lower back reveals the patient has a little bit of muscle spasm in lower back area with painful range of motion. Straight leg raising is positive in the right side about 30-40 degrees and the left side about 50-60 degrees. Exam of right hip reveals painful range of motion. Right knee again is a little bit swollen with painful range of motion. Right ankle shows a little bit of swelling with painful range of motion. Assessment was status post coronary artery bypass graft, high blood pressure, hyperlipidemia, diabetes, chronic right lower extremity swelling, unsteady gait. Medical records reviewed indicate the surgical procedure and problem with her heart and the lower extremity.

The Claimant's treating cardiologist on [REDACTED] performed Transthoracic Echocardiography. The findings were that [REDACTED] the transmitral flow pattern is normal, pulmonary vein flow pattern is normal, [REDACTED] tissue dopplar parameters are normal, left

ventricular diastolic functions are normal and the ejection fraction is in the range of 50% to 55%. A note on the record notes that the Claimant's heart strength is just about normal. Exhibit 3

There were no other recent medical records presented.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. Accordingly, the 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 or are expected to last for twelve months; therefore, the 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

Listing 4.00 Cardiovascular System specifically 4.04 ischemic heart disease and 4.06 Symptomatic Congenital Heart Disease, 1.04 Spinal Disorders and 9.00 Endocrine Disorders (Diabetes) were considered in light of the objective medical evidence. Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of a listing. The Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and

occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are not required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching,

handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of telephone ad sales solicitation for a newspaper, which job she has performed for the past 7 years working 26 hours per week consisting of four, 6 hour work days. The Claimant sits most of the day and speaks by telephone to her potential customers soliciting advertisements for her employer, a newspaper. Claimant's work given these parameters would be considered sedentary semi-skilled work. Prior to this employment, the Claimant was a stay-at-home mom.

The Claimant testified that she can stand for 10 minutes and sit for a few hours, and that she has a problem with stairs and walks with assistance, although does not use a cane. She can shower and dress herself and has some tremors in the left arm and the right leg cramps because of her artery being harvested. The Claimant testified that while she is insulin dependent her diabetes is under control. While the claimant further testified that she had difficulty walking due to a torn Achilles tendon, she does not walk with a cane. The Claimant indicated that she does not cook, she does load the dishwasher and can make the bed. The Claimant drives the car and takes herself to and from work. The Claimant grocery shops on her own and uses the grocery cart to assist her with walking. The Claimant does have difficulty reaching due to chest pain around her incision from her coronary bypass surgery and the Claimant does take pain medication for the pain. The pain is worse lying down than standing.

A further discussion of substantial gainful activity (SGA) is necessary as the claimant is presently employed at a job she has performed for the last seven years. In general the primary consideration to determine SGA is earnings. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do SGA. The regulations define what is meant by substantial gainful activity as follows:

Substantial gainful activity is work that is both substantial and gainful:

(a) Substantial work activity. Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part time basis, or if you do less, get paid less, or have less responsibility than when you worked before.

In this case the Claimant currently earns \$936 per month on a part-time basis, which is \$74 less than the \$1010 gross earnings threshold which would automatically deem Claimant's employment as SGA.

(b) Gainful work activity. Gainful activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit whether or not a profit is realized. 20CFR 416.972. In general consideration must be given to the nature of your work, requiring that duties require use of your experience, skills and responsibilities or contribute substantially to the operation of a business tends to show that you have the ability to work at the SGA level. Additionally, consideration is given to how well you perform, i.e. if you do your work satisfactorily. Based upon the Claimant's credible testimony it appears that she does contribute substantially to the operation of the business as advertisement sales are a source of revenue for the employer and it appears that the Claimant, given her longevity of employment, performs satisfactorily without much supervision and works independently making cold calls to solicit advertisements. The Claimant did not mention any special circumstances which were applied to the Claimant's work due to any of her impairments.

The Claimant did mention that she experiences fatigue and chest pain associated with the healing of Claimant's heart bypass surgery which is now 9 months post operation during and after her work day is completed. Based upon the medical evidence presented and the testimony of the Claimant, it is determined that the record did not support that such fatigue and pain would make Claimant unable to continue her job and continue to perform this past relevant work. It is also determined that Claimant's current employment is substantial gainful activity in spite of the fact that her earnings fall short of the \$1010 earnings from employment required to establish substantial gainful activity on an earnings basis and even though Claimant's work is part time.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. There were no medical records independently evaluating the Claimant's physical limitations which placed restrictions on the Claimant physically which would prohibit her from performing and continuing to perform her job. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is able to return to past relevant work.


In this case, the Claimant is found not disabled for purposes of the MA-P program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P, Retro MA and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.


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

Date Signed: December 19, 2012

Date Mailed: December 19, 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.

2012-71448/LMF

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

cc:

