

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

IN THE MATTER OF:

[REDACTED]

New Reg. No.: 201255400
Old Reg. No.: 201233944
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: [REDACTED]
County DHS: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

ORDER OF RECONSIDERATION

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 properly determine that Claimant did not meet the disability standard for Medical Assistance (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 [REDACTED] ALJ Janice G. Spodarek issued a Decision & Order in which the Administrative Law Judge upheld the Department of Human Services (DHS).
2. On [REDACTED] The Michigan Administrative Hearing System (MAHS) for DHS received Claimant's timely request for Rehearing/Reconsideration.
3. On [REDACTED], MAHS granted the Claimant's request for reconsideration and issued a Notice of Reconsideration to the Claimant.
4. Findings of Fact 1-29 from the Decision and Order, mailed on [REDACTED], are 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).

The State Disability Assistance (SDA) program, which provides assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MACR 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

Current legislative amendments to the Act delineate eligibility criteria as implemented by agency policy set forth in program manuals . . . 2000 PA 294, Sec. 604, of the statute states:

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 exempted from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 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.

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.
20CFR 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.

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 CCR 416.9677 (b).

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 416.290 (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 are ineligible for MA. If no, MA is approved. 20 CFR 416.920 (f).

Claimant is not disqualified from receiving disability at Step 1, because the evidence on the record fails to establish that she was substantially gainfully employed at any time relevant to this matter. Therefore, the analysis continues to Step 2.

The ALJ found that Claimant is alleging disability on the basis of anemia, diabetes, obesity, **fibromyalgia**, and a herniated disc. (See p.2 of the ALJ's [REDACTED], *Decision and Order*). The ALJ correctly noted that Congress removed obesity from the Listing of Impairments, and that obesity is not in-and-of itself sufficient to show statutory disability. Obesity was removed from the Listing of Impairments effective [REDACTED]. Although it was removed, it is still considered a severe impairment if it significantly limits a person's physical or mental ability to work.

In this case, the objective medical evidence on the record shows that Claimant was morbidly obese with a body mass index of 51, and her physical examination revealed multiple tender points with no motor or sensory deficits. In [REDACTED], she was 5'2" and weighed 279 lbs. The February 2011 x-ray of Claimant's cervical spine showed a small central disc herniation; the x-ray of her thoracic spine showed degenerative changes; and the x-ray of her lumbar spine was normal. Claimant's [REDACTED] electromyogram revealed mild to moderate right carpal tunnel syndrome.

The finding of a severe impairment at Step 2 is a *de minimus* standard. Based on the objective medical evidence on the record, Claimant established that she has a combination of chronic medical problems that meet the severity and duration standard for MA-P and SDA purposes. Therefore, the analysis continues.

This ALJ considered the following listings found at 20 CFR, Part 404, Subpart P, Appendix 1: **1.00-Musculoskeletal system**; **1.03-Arthritis of a Major Weight-Bearing Joint**; **1.04-Arthritis of One Major Joint In Each of the Upper Extremities**; **1.05-Disorders of the Spine**; and **9.08- Diabetes Mellitus With Neuropathy, Acidosis, Amputation, or Retinitis**. In this case, Appellant failed to provide any objective medical evidence to establish that she has a severe impairment that meets or equals any listing. Therefore, the analysis continues.

Based on the evidence on the record, Claimant has past relevant work experience as a certified nurse's aide, and she was a housekeeper. Claimant failed to provide the necessary objective medical evidence to establish that she has a disabling condition that prevents her from doing any of her past relevant work. The most recent physical examination report that she submitted revealed multiple tender points with **no motor or sensory deficits**. The laboratory data of her cervical spine revealed a **small central**

disc herniation; the laboratory data of her thoracic spine showed **degenerative changes**; and the laboratory data of Claimant's lumbar spine was **normal**. Claimant's EMG revealed **mild to moderate right carpal tunnel syndrome**. The assigned ALJ pointed out that although Claimant was diagnosed with a disc herniation during the period of [REDACTED] she was able to work. (See p.10 of the ALJ's [REDACTED] *Decision and Order.*)

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).

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Based on the evidence on the record, Claimant is considered a younger individual with a high school education and unskilled to semi-skilled work experience. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Using Medical Vocational Rules 201.27 and 202.20 as guidelines, Claimant would be considered not disabled. According to these Medical Vocational Rules, a younger individual with a high school education and just unskilled work experience, limited to sedentary and light work, respectively, is not disabled.

In conclusion, the ALJ correctly found that Claimant did not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the ALJ's MA-P and SDA Decision and Order are upheld.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Administrative Law Judge correctly found that the Claimant was not disabled and not eligible for MA-P and SDA benefits.

IT IS THEREFORE ORDERED that:

The Administrative Law Judge's decision dated [REDACTED] is **AFFIRMED**.

/s/ _____
Marya A. Nelson-Davis
Administrative Law Judge Manager
for Maura Corrigan, Director
Department of Human Services

Date Signed: 05/09/2013

Date Mailed: 05/10/2013

*****Notice*****

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

MAND/kl

cc:

[REDACTED]