

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-3642
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 6, 2012
County: Oakland (63-04)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 February 6, 2012, from Pontiac, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The record was extended to allow additional relevant medical evidence to be submitted. Claimant waived timeliness. The additional medical evidence was received and submitted to the State Hearing Review Team (SHRT) for review prior to this decision being issued.

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 January 27, 2011, Claimant applied for MA-P and retro MA-P to November 2010.
2. On June 23, 2011, the Medical Review Team denied Claimant's request.

3. On September 29, 2011, Claimant submitted to the Department a request for hearing.
4. SHRT denied Claimant's request.
5. Claimant is 51 years old.
6. Claimant completed education through high school.
7. Claimant has employment experience (last worked January 2011). She worked 3 days at a gas station before being let go because she was unable to perform the job. She worked at a laundromat for 7 years. Claimant also worked as an assistant apartment manager for 4 years total.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from congestive heart failure, high blood pressure, gallbladder problems, chronic kidney disease, vision disturbance, back pain, depression, anxiety and anemia.
10. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has some limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

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 steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. 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 congestive heart failure, high blood pressure, gallbladder problems, chronic kidney disease, vision disturbance, back pain, depression, anxiety and anemia. Claimant's treating psychiatric records from [REDACTED] reveal that Claimant's mental status exams are unremarkable and her condition was stable. In [REDACTED], a consultative examiner indicated that Claimant had no

history in-patient or hospitalization due to mental condition. This consultant noted that Claimant receives ongoing psychiatric care. This consultant indicated that Claimant was capable of completing daily activities independently, her thoughts and speech were normal, her memory was intact and fund information was adequate. This consultant found Claimant had a GAF of 57. In [REDACTED], Claimant reported improved mood and controlled anxiety with medication.

In [REDACTED], Claimant was admitted to the hospital for hypertensive emergency, congestive heart failure, pneumonia, anemia, chronic kidney disease, depression and anxiety. Claimant was treated and released in stable condition. A [REDACTED] consulting internist found the following: vision good, use of inhalers for shortness of breath, kidney condition not requiring dialysis, joint pain, reported ability to walk 3 blocks, can drive, manage her own daily activities, independent ambulation, blood pressure of 112/70, negative straight leg raise, full range of motion, crepitus in both knees, equal grip, no loss of dexterity, sensory intact, reflexes brisk, gait normal, pulmonary function test FEV₁ of 1.74.

A DHS-49 completed by Claimant's surgeon on [REDACTED], based upon an exam completed on [REDACTED], indicates Claimant suffers with congestive heart failure and hypertension. This physician noted the following in the listed exam areas of the DHS-49: okay in the general exam area, HEENT and respiratory. This physician made an illegible mark next to the cardio-vascular section, mild obesity noted in the abdominal section, musculoskeletal section another illegible noted (something regarding the leg noted), illegible mark in the neuro section and no comment in the mental. This physician indicated that Claimant's condition was improving and she was able to meet her needs in her own home.

A DHS-49 completed by Claimant's family physician on [REDACTED], was based on a [REDACTED] examination. This physician noted he has treated Claimant since [REDACTED]. This physician indicated the following diagnosed conditions: COPD, CHF, HTN, hyperlipidemia, skin lesion, dyspepsia, vaginal candidiasis. This physician made one other illegible note under current diagnosed conditions. Claimant's blood pressure was noted to be 125/77. This physician noted the following in the listed exam areas of the DHS-49: general exam area was noted AAO x 3, HEENT visual defects - referred to ophthalmology central dimming and blurring L eye has floaters scotoma, respiratory slight endoexpiratory wheezing. Cardio-vascular section noted normal S1, S2 No S3 no murmur; abdominal section noted dilated common bile duct and pancreatic duct referred; musculoskeletal section noted skin lesion referred to Gen surg for biopsy, no other info and illegible mark; neuro section noted no date available in chart; and mental noted anxious. This physician indicated that Claimant's condition was stable and she was able to meet her needs in her own home.

Claimant testified to the following symptoms and abilities: sleep is disturbed, medications make her very tired, has menstrual bleeding occurring twice a month, bleeding hemorrhoids, shortness of breath on exertion, takes her longer to accomplish household chores, can lift 40 lbs occasionally, testified she carried a salt bag last year,

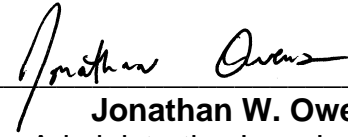
can lift 20 lbs on a frequent basis, can walk 2 blocks on a bad day, no problems with grip and grasp, no problems with sitting, no problems with bending or stooping, can stand 40 minutes and sit for 5-10 minutes and then she can stand again, can manage her own grocery shopping and she is capable of driving, has anxiety attacks occurring twice a month, crying spells occurring daily, no thoughts of suicide, chest pains occurring twice a week, sleeps in her bed in an upright position to help with congestion and airflow and occasional hip pain which she doesn't feel is serious as it doesn't impact her ability to walk. Claimant indicated she believes she could perform office work with training.

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 as a shipping and receiving clerk, laundromat attendant and apartment manager. The Claimant indicated on her DHS forms, specifically Exhibit 1, p. 46, that her employment at the laundromat and shipping and receiving would be considered medium work. She noted her employment as an apartment manager was light work. Claimant completed several forms as part of her application for Social Security. The Department submitted part of this application in Department Exhibit 1, pp. 61-66. These forms indicate the activities for each job Claimant worked including all basic work functions and the time performing each. The records support that Claimant would be limited to light work at a minimum. The employment listed by Claimant as medium work, specifically the laundromat and shipping and receiving employment, would be beyond Claimant's ability according to the evidence submitted. However, Claimant testified she would be capable of office work. Claimant previously performed office work as an apartment manager. According to the forms Claimant completed, specifically Department Exhibit 1, p. 65, Claimant's work as an apartment manager would be sedentary. Claimant indicated she sat 7 hours in an 8-hour work day and stood an hour a day. Claimant noted the heaviest weight lifted in this position was 10 lbs and frequently lifted less than 10 lbs. The medical evidence fails to demonstrate severe limitation or limitations on Claimant's basic work function that would prevent her from being capable of performing this position. Claimant's impairments fail to prevent her from being able to perform the duties necessary for past employment. This Administrative Law Judge finds, based on the medical evidence and objective, physical and psychological findings, that Claimant is capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHELD.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 17, 2012

Date Mailed: April 17, 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

JWO/pf

cc:

