

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

IN THE MATTER OF:



Reg. No.: 2012-66848
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 24, 2012
County: Wayne (18)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on October 24, 2012 from the Taylor, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED]ght, her spouse, who appeared as a witness. [REDACTED] the Claimant's Authorized Hearing Representative (AHR), also appeared. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Medical Contact Worker.

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 May 25, 2012, Claimant applied for MA-P and retro MA-P (April 2012)
2. On July 6, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant and the Claimant's AHR a Notice of Case Action dated July 19, 2012 denying the Claimant MA-P application. Exhibit 1

4. On July 24, 2012 Claimant's AHR submitted to the Department a timely hearing request. Exhibit 2
5. On September 14, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on October 26, 2012 and new evidence was submitted thereafter on the Claimant's behalf.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on January 16, 2013 and SHRT denied disability on March 21, 2013.
8. Claimant was [REDACTED] years old on the date of the hearing with a birth date of [REDACTED]
9. The Claimant is a high school graduate and completed an associates degree in medical billing.
10. Claimant has employment experience [REDACTED] as a receptionist for a home care agency answering phones, filing, doing computer work performing patient intake, entering patient information and insurance information in the computer system.
11. Claimant's limitations and impairments have lasted and are expected to continue for 12 months or more.
12. Claimant has alleged physical disabling impairments due to chronic neck pain, headaches, dizzy spells, fibromyalgia, back pain, balance problems and numbness in right hand, elbow and arm.
13. Claimant has not alleged any mental disabling impairments.
14. 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).

A summary of the medical evidence and testing submitted on behalf of the Claimant follows. The Claimant has alleged physical disabling impairments due to chronic neck

pain, headaches, dizzy spells, fibromyalgia, back pain, balance problems and numbness in right hand, elbow and arm.

The Claimant's primary care treating physician who has seen Claimant frequently completed a Physical Residual Functional Capacity Questionnaire on [REDACTED]. The diagnosis was back pain, neck pain, spasm radiating, general myalgias, leg pain, fatigue and dizziness. Prognosis was fair. The symptoms were listed as back pain, severe neck pain, dizziness, right arm pain, near syncope, and muscle spasm. The doctor characterized the nature and location of pain as neck pain worse with movement and lifting, and moderate to severe constant pain. The clinical findings and objective signs were MRI lumbar spondylosis L2-L3, L3-L4. The evaluation indicated that the Claimant's impairments are expected to last at least 12 months. The patient was not a malingeringer. Emotional factors were noted as contributing to the severity of the symptoms and were consistent with the physical symptoms and functional limitations described in the evaluation. The evaluation questionnaire asked the evaluator, "How often during a typical work day is your patient's experience of pain or other symptoms severe enough to interfere with attention and concentration needed to perform even simple work tasks?" The evaluator answered frequently. In answer to the question to what degree can your patient tolerate work stress, the answer was incapable of even "low stress" jobs. The evaluator indicated that Claimant could walk 1 or 2 blocks, and the evaluation also indicated that Claimant could sit for only 15 minutes before needing to get up. The evaluation also noted Claimant could stand at one time only 15 minutes before needing to sit down. The Claimant was also evaluated as capable of sitting/stand/walk less than two hours in an 8 hour day. The Claimant also was required to be walking around throughout the day for 20 minutes. The Claimant was evaluated as needing breaks every hour for 15 or 20 minutes and her legs required elevation with prolonged sitting. No cane was necessary. The Claimant was evaluated as being able to lift frequently less than 10 pounds. With regards to the Claimant's neck pain and impairments the doctor indicated that the Claimant could rarely turn her head left or right, look up, or hold her head in a static position and could only look down frequently. The Claimant's ability to twist, stoop (bend), crouch/squat, climb ladders, and climb stairs were rated as never. The claimant had noted significant limitations with reaching, handling or fingering and further noted that could grasp turn or twist objects, fine manipulate and reaching with arms only 10% of an 8 hour work day with her right hand (dominant hand). The evaluation concluded that the Claimant would be absent more than four days per month as a result of the impairments or treatment.

The Claimant was seen on [REDACTED] by a rheumatologist regarding her back pain in the thoracic area and around the scapulae for months. The report notes cervical fusion at C4-C7. Fibromyalgia tender points are present in 18/18 points. The assessment was history of severe back pain and generalized myalgias with additional allodynia. All this points to fibromyalgia, confirmed with this exam. The recommendations were to improve sleep, and reduction in stress and improvement in mood. Claimant presented as sad and depressed.

An electroneuromyography was conducted on [REDACTED] for right arm paresthesias and hand weakness. The study showed a decrease in conduction velocity of the ulnar motor nerve across the elbow. All other nerves tested were normal. Needle electromyography showed evidence of chronic motor unit changes in C5-C7 innervated muscles, characterized by decreased recruitment and increased amplitudes. The examiner concluded the results indicated an abnormal electrodiagnostic evaluation. Evidence of right ulnar mononeuropathy across the elbow, characterized by focal demyelination with no axonal loss. There is also evidence of chronic C5 – C7 radiculopathy, as noted on EMG performed [REDACTED]. There is no evidence of an acute radiculopathy, brachial plexopathy or median mononeuropathy at the wrist.

On [REDACTED] the Claimant was seen in the U of M Spine Clinic for pain management due to chronic pain in her neck with pain radiation into her right posterior arm, into the extensor forearm and into the index, middle and ring finger with difficulty moving her hand on a keyboard, with worsening pain after 20 minutes on computer or doing household activities such as laundry. Assessment after testing and clinical evaluation was pain in multiple dermatomes, and weakness in the C5-C6 muscles on the right side.

On [REDACTED] the Claimant was prescribed physical therapy for her cervical spine and attended physical therapy. At this time the Claimant presented with worsening back pain in her low back with radiation down both legs to the lower extremities, worse on the right. Claimant complained of right leg weakness with trouble walking. MRI of cervical spine did not show spinal cord compression. The claimant also complained of balance issues. Session noted Claimant very tired and must sit after walking 50 feet X2 and had to stop momentarily at end to regain balance. Exam noted lumbar range of motion, 75% with pain at end of range L5. Side bending 50%(L) and 75% (R). Muscle tests were normal. The Discharge Plan was to discharge patient home with HEP and therapy follow up 2x week. Discussed use of cane. Claimant's physical therapy continued for core strengthening for lumbar spine and hip on the following dates, [REDACTED] [REDACTED] noted improvement with cane and improved heel strike on right, improved arm swing, not hunched forward and noted decreased guarding. The Claimant continued physical therapy on [REDACTED] and noted improvement and felt good.

A Medical Examination Report was completed. The Diagnosis was back pain with note of spinal fusion, rheumatoid. The exam could not be read due to the handwriting. Musculoskeletal was not tested.

On [REDACTED] a cervical transforaminal epidural injection was performed into the posterior portion of the foramen. There was venous vascular flow noted at multiple different areas during injection and needle was removed and procedure aborted.

On [REDACTED] Claimant was seen at the [REDACTED]. Noted restricted range of motion of the cervical spine with flexion, extension and side bending and upper body trunk rotation with nonantalgic gait. No spinal cord compression or central canal

stenosis in cervical spine. Claimant was referred for a C6-C7 interlaminar epidural steroid and to begin physical therapy. Claimant was advised not to drive due to black out spells.

Positive Hoffmans. Exam on [REDACTED].

In [REDACTED] the Claimant was examined relative to seizure disorder at an Epilepsy Clinic. Claimant described seizure spells, with blankness that goes throughout her brain, and felt in the forehead with lack of train of thought. The impression was non-conclusory due to Claimant having no medical insurance for a brain MRI. The examiner also felt some of the fainting spells could be pre-syncope or syncope but has not been seen by a cardiologist.

The Claimant received an interlaminar epidural injection on [REDACTED] and tolerated the procedure well. On [REDACTED] Claimant was seen in ER for leukocytosis with cause for concern with meningitis and was admitted to the hospital. The Claimant's hospital stay was from [REDACTED]. The Claimant received four lumbar punctures, one causing radiating pain in the right groin all the way down the leg. The assessment noted concern for myelopathy and an MRI of spine and thoracic spine was performed to look for spinal cord compression. The Claimant was discharged in stable condition. Discharge diagnosis was acute hypotension, acute leukocytosis cervical pain, fibromyalgia and depression.

An MRI of thoracic and cervical spine was performed on [REDACTED]. The MRI impression was normal appearance of the cervical and thoracic cord.

Here, Claimant has satisfied requirements as set forth in steps one of the sequential evaluation as she established that she is not substantially gainfully employed and has met the step two severity of impairments requirement. A step three sequential evaluation was made, however, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listings 1.04 Disorders of the Spine and 1.02 Major Dysfunction of a joint (due to any cause) were reviewed, and ultimately based upon the medical evidence and MRI testing, it is determined that neither listing was met. Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

Claimant has alleged physical disabling impairments and has been diagnosed with chronic neck pain with a history of cervical fusion, C4-C7, headaches, dizzy spells, fibromyalgia, back pain, balance problems and numbness in right hand, elbow and arm and right leg weakness. 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 and limitations were imposed with lifting of less than 10 pounds only. The evaluation conducted by the treating physician completed for a social security examination is extensive and thorough. It was also noted that Claimant was not capable of repetitive movements with either her hand/arm with regard to fine and gross

motor skills, worse for the right hand and arm, the Claimant's dominant hand. The Claimant has also been diagnosed with fibromyalgia with 18 of the 18 trigger points positive. The Claimant also appears to have suffered complications from a spinal piercing secondary to an injection for her cervical spine which required hospitalization and has left her with residual pain radiating to her leg and weakness of the right leg.

Claimant testified to the following symptoms and abilities: The Claimant credibly testified that even after undergoing a physical therapy course she still cannot walk more than 2 blocks, can stand 8 to 12 minutes and can sit only 10 minutes. The claimant also credibly testified that she can shower but needs assistance with dressing herself, cannot squat, has limited bending capacity at the waist and the heaviest weight she can carry is a quart of milk. The Claimant is right hand dominant and has pain and numbness in her hand and arm and right leg weakness also since the epidural injection. The Claimant can no longer type on a sustained basis. The Claimant's sleep is interrupted 4 or 5 times nightly due to pain and numbness. The claimant's spouse credibly testified that he performs many of the household chores due to the Claimant's pain and lifting/standing limitations and problems with her right hand.

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 receptionist for a home care agency answering phones, filing and doing computer data entry work, performing patient intake entering patient information and insurance information in the computer system. This required Claimant to be capable of typing and filing, standing and sitting and working at a computer entering data. The Claimant's prior work would be characterized as unskilled sedentary work. 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 [REDACTED] years old and, thus, considered to be closely approaching advanced age for MA-P purposes. The Claimant has the equivalent of a high school education with an associates degree in medical billing. 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).

In this case the medical evidence reveals that the Claimant's medical conditions include physical disabling impairments due to chronic neck pain with a history of cervical fusion at C4-C7, headaches, dizzy spells, fibromyalgia, back pain, balance problems and numbness in right hand, elbow and arm. The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR § 404.1527(d)(2), Deference was given by the undersigned to objective medical testing, particularly the MRI of the claimant's lumbar spine and cervical spine and observations and opinions of the Claimant's treating physician and physical therapy outcomes.

The objective medical evidence provided by the Claimant's treating primary care physician and in consideration of several hospital admissions and testing data which medically support Claimant's chronic and severe neck and back pain place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments including her chronic pain and fibromyalgia have a major impact on her ability to perform basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

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 as of April 2012.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated May 25, 2012, and the Claimant's retro application (April 2012) if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for April 2014.



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

Date Signed: April 15, 2013

Date Mailed: April 15, 2013

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/cl

cc:

