

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 57865
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: August 27, 2012
County: Wayne (76)

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, a telephone hearing was held on August 27, 2012 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. [REDACTED] also appeared as witnesses on behalf of the Claimant. 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 and State Disability Assistance ("SDA") 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 20, 2012, Claimant applied for MA-P and retro MA-P to October 2012 and State Disability Assistance ("SDA").
2. On May 16, 2012, the Medical Review Team denied Claimant's request.
3. On May 29, 2012 the Department notified the Claimant of the MRT denial.
4. On May 29, 2012 the Claimant submitted to the Department a timely hearing request.

5. On July 23, 2012 SHRT found that the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on August 27, 2012 ordering that the Department obtain DHS 49s from the Claimant's doctors, [REDACTED], and ordering the Department to schedule a consultative psychiatric examination. No new evidence was received and thus this matter was not submitted to the State Hearing Review Team for further evaluation.
7. Claimant is [REDACTED] years old with a birth date of [REDACTED].
8. Claimant completed GED.
9. Claimant has employment experience (last worked 2009) as a home care aide, a Secretary and as an Administrative Assistant.
10. Claimant's limitations have lasted for 12 months or more.
11. Claimant suffers from diabetes type II uncontrolled, diabetic neuropathy, carpal tunnel syndrome both hands, low back pain and joint pain, and fibromyalgia.
12. The Claimant alleges mental disabling impairments consisting of depression.
13. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
14. The Claimant's impairments have lasted or are expected to last 12 months or more in duration.

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 sequential five step order is used to analyze and 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 psychiatrists 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 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 presented in this case follows. A consultative psychiatric evaluation was conducted on [REDACTED]. The examiner noted that the Claimant appeared depressed during the interview. The diagnosis was mood disorder and the GAF was 48, prognosis was fair to guarded. Medical source statement stated, based on today's evaluation, the Claimant is able to understand and retain and follow simple instructions. The Claimant worked all her life and now she cannot do

things due to her health problems. She is depressed due to her health. The Claimant was deemed able to manage her benefits funds.

A consultative examination was conducted on [REDACTED] by an internist. The Claimant was seen for disability due to diabetes, diabetic neuropathy, carpal tunnel syndrome in both hands, back pain, joint pain, anxiety and depression. The examiner noted moderate restriction of range of motion in lumbar spine. The examiner concluded that based on the examination, the patient has moderate restrictions for occupational ability secondary to her carpal tunnel syndrome, diabetic neuropathy and lumbar myositis. The patient has limitations for walking, standing and climbing stairs and ladders. Assessment was diabetes type II uncontrolled, diabetic neuropathy, moderate, bilateral carpal tunnel syndrome, right worse than left, she is right handed. Chronic lumbar myositis, mild in nature and depression by history.

An Interim Order issued previously by the undersigned ordered the Department to obtain a DHS 49 from the Claimant's treating doctors and a consultative psychiatric examination. The ordered DHS 49s by Claimant's treating physicians were not received and the psychiatric consultative examination was also not received.

The Claimant was seen in the emergency room due to blurry vision and a CT of the brain was performed resulting in an unremarkable study of the brain. The Claimant also presented with muscle spasm in left arm and chest pain for 3 days. The impression was no focal neurological deficit and numbness and tingling sensation of both hands and arms suggestion carpal tunnel syndrome and peripheral neuropathy, probably diabetic. An echocardiogram was normal. A carotid duplex examination was performed noting bilateral carotid stenosis less than 40%.

A motor nerve study was conducted in [REDACTED] and noted impression electrodiagnostic evidence of mild mixed, i.e. axonal and demyelinating sensorimotor polyneuropathy. Chronic inflammatory demyelinating polyneuropathy (CIDP) is an acquired [immune-mediated inflammatory disorder](#) of the [peripheral nervous system](#).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The evidence presented established that the Claimant is not substantially gainfully employed, and the medical evidence summarized above establishes that Claimant has a combination of medical impairments which are severe. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listings 1.02 major dysfunction of a Joint(s) due to any cause; 1.04 Disorders of the Spine; and 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 diabetes type II uncontrolled, diabetic neuropathy, carpal tunnel syndrome both hands, low back pain and joint pain, and fibromyalgia. The consultative examiner did impose restrictions as follows. The patient has limitations for walking, standing and climbing stairs and ladders.

Assessment was diabetes type II uncontrolled, diabetic neuropathy, moderate, bilateral carpal tunnel syndrome, right worse than left, she is right handed. Chronic lumbar myositis, mild in nature, and depression by history.

The Consultative psychiatric examination examiner noted that the Claimant appeared depressed during the interview. The diagnosis was mood disorder and the GAF was 48, prognosis was fair to guarded. Medical source statement stated, based on today's evaluation, the Claimant is able to understand and retain and follow simple instructions. The Claimant worked all her life and now she cannot do things due to her health problems. She is depressed due to her health. The Claimant was deemed able to manage her benefits funds.

Claimant credibly testified to the following symptoms and abilities: pain in hands and feet, unregulated diabetes with high blood sugars despite medications, she could stand an hour and sit one hour but her feet and hands throb, can walk one to two blocks, cannot lift anything more than 5 pounds and drops things due to numbness in her hands. The Claimant cannot squat, and can shower and dress herself slowly. The Claimant credibly testified that several days a week she remains in bed unable to get up and has difficulty sleeping at night. The Claimant does not cook and relies on her son or daughter to help her and cannot shop without others assisting her. The Claimant no longer drives a car due to muscle spasm in her leg and pain in her hands.

As regards her mental disabling impairment of depression, the Claimant credibly testified that she seldom leaves her home and only sees her son or daughter. She often skips meals as she does not have an appetite. A witness for the Claimant who has known her for some time noted that she personally observed that the Claimant had no energy and cannot screw on tooth paste caps due to pain in her hands. The other witness who sees Claimant often indicated that the Claimant could no longer cook for herself.

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 home care provider and a secretary and her last employment was as an administrative assistant. This required Claimant to be capable of lifting weight in excess of 20 pounds for the home care provider and performing basic chores. As an administrative assistant the Claimant was required to answer phones, use a copier, memo writing, and served as an office manager. She walked 1.5 hours and stood 1.5 hours and sat 5 hours. Her job also required her to use machines and technical knowledge and skill and writing. The last position held by the Claimant required her to lift 10 to 20 pounds of office supplies twice a week as well as equipment. 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 will be [REDACTED] years of age at [REDACTED] and, thus is considered to be of advanced age for MA-P purposes. The Claimant has a GED. 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 and that her past relevant work was semi-skilled but is non-transferrable light work. 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 201.06, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits

based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, she is found disabled for purposes of SDA benefit program.

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 September 2010.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated January 20, 2012, and the Claimant's retro MA-P application (October 2012) and the SDA application if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for SDA benefits the Claimant is otherwise entitled to receive, if any, in accordance with Department policy.
3. A review of this case shall be set for March 2014.



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

Date Signed: March 18, 2013

Date Mailed: March 18, 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

Re consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

LMF/cl

cc:

