

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

IN THE MATTER OF THE CLAIM OF:



Reg No.: 2012-49941
Issue No.: 2009,4031
Case No.: [REDACTED]
Hearing Date: August 6, 2012
Oakland County DHS (04)

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 in Pontiac, Michigan on August 6, 2012. The Claimant appeared and testified. Georgia Patthanacharoenphon, of L & S Associates, the Claimant's Authorized Hearing Representative, also appeared. Participating on behalf of the Department of Human Services ("Department") was Suzanne Aldridge, ES.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability ("SDA") benefit program?

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 applied for Medical Assistance MA-P, retro MA-P (July 2011) and State Disability Assistance ("SDA") on October 13, 2012.
2. On December 22, 2011 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT decision on January 6, 2012.

4. On April 27, 2012 the Department received the Claimant's timely written request for hearing.
5. On June 7, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on August 6, 2012 requesting the Department obtain new evidence and included new evidence submitted at the hearing by the Claimant's AHR. The new medical evidence was submitted to SHRT on December 21, 2012.
7. On February 6, 2013 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to low back pain, chronic renal failure, GERD, severe fatigue and high blood pressure and heart disease.
9. The Claimant alleges mental disabling impairments of depression and was also diagnosed with somatization disorder.
10. Claimant is 57 years old with a birth date of [REDACTED]. Claimant completed education through the 12th grade.
11. Claimant has employment experience (last worked 2008) as a telemarketer, Claimant also worked as an in store sales representative, and as a broadcast programmer and worked in phone sales for American Water Systems. The Claimant also worked with children assisting teachers. Claimant also worked as a parking lot cashier and attendant,
12. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
13. Claimant's limitations have lasted and are expected to continue for 12 months or more.

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 pertinent medical evidence follows.

On August 7, 2012 a Medical Examination Report was prepared by the Claimant's Family Medicine physician. The diagnosis was hypertension, myositis, GERD, displydemia, edema, depression, cataracts, chronic heart failure, chronic renal failure, left knee osteoarthritis, and polymyalgia rheumatic. The examiner noticed obesity and severe fatigue, distant breath sounds (respiratory) , 2+ lower extremity edema bilateral, left knee diffuse tenderness and mental noted as flat affect. Laboratory findings that were referenced and noted reduced GFR significant for chronic renal failure and left knee x-ray. The claimant has seen this physician for at least one year.

The examiner imposed the following limitations, occasionally lifting less than 10 pounds, standing/walking less than 2 hours in an 8 hour work day, the claimant was able to perform repetitive actions with her hands and arms and the Claimant could not operate foot control with left leg due to osteoarthritis. The examiner also noted mental limitations with sustained concentration and following simple directions supported by acute threshold for pain due to myositis. The exam noted Claimant needed assistance with bathing laundry, overhead reaching etc.

The Claimant's doctor also completed a New York Heart Association Classification which evaluated the Claimant as Class IV Patients with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of cardiac insufficiency of the anginal syndrome are present even at rest. If any physical activity is undertaken discomfort is increased. It further notes patients with cardiac disease whose ordinary physical activity should be markedly restricted.

A consultative Psychological Evaluation was completed on August 21, 2012. A diagnostic interview was performed and a mental status examination was completed. The GAF was 62 and the diagnosis was somatization disorder (characterized by recurring, multiple, clinically significant complaints about pain, gastrointestinal, sexual and pseudoneurological symptoms). The assessment noted that Claimant had has mental ability to relate to others, fellow workers supervisors and general public in a work related environment. Capable to carry out simple tasks within normal limits. Ability to learn and work independently. Has ability to maintain her attention, concentration and persistence and pace when performing routine well learned tasks. Claimant was found mildly impaired to withstand stress and pressures associated with day to day work due to her pain disorder. Prognosis is hopeful as long as she stops from being preoccupied with her pain.

On September 11, 20 12 Claimant was seen for a likely acute kidney injury that is resolved, creatine was normal. Diagnosis was essential hypertension and urinary tract infection.

On March 13, 2012 a progress visit note indicated chronic kidney disease stage 3 versus acute kidney injury. The Claimant was seen for urinary tract infection

In April 2012 the Claimant was seen for left knee, right foot and ankle pain, chronic. The examiner noted parasponal fullness with muscle spasming in the lumbar region. Tenderness to palpation over the medial and lateral patella facet of the left knee. She has obvious pain and edema to the right ankle as well as pes planus bilaterally. Range of motion, testing to lumbar spine is limited with flexion, side bending and rotation. She does have pain with motion to the lumbar spine. Range of motion testing through the knees is 0-130 bilaterally. She has pain in the anterior aspect with full flexion. Range of motion through both ankles is limited with plantar flexion and dorsiflexion bilaterally. An x-ray of the lumbar spine shows L5 S1 degenerative change with hypertrophied bony structures and osseous bridging of the anterior aspect of the spine. X ray of knee shows osteoarthritic change. Assessment spondylosis lumbar spine L5-S1. Left lower extremity radiculopathy, chondromalacia patella, flat foot, polyarthria. On testing the impression was L5-S1 degenerative disc space disease, mild grade 1 anterolisthesis of L5 on S-1.

On April 30, 2012 the Claimant was seen by her family practice physician and the diagnosis was hypertension, mixed hyperlipidemia, copd and major depressive disorder and edema. The exam noted severe fatigue with patient presents clinically more with polymyalgia, rheumatic than fibromyalgia and referral to rheumatologist.

In July of 2011 the Claimant was admitted for intractable nausea and emesis with noted free air within the neck secondary to esophageal perforation. Discharge diagnosis was esophageal perforation status post esophagogastroduodenoscopy. The admission was for 7 days and Claimant was discharged as stable.

The Claimant was also in treatment for mental impairments for a period of time with Oakland Psychological Clinic and at that time the diagnosis was major depressive disorder and was prescribed Paxil and was receiving weekly out patient therapy.

In March 8, 2011, the Claimant had her second surgery for a ganglion cyst of left wrist due to recurrent cyst.

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The evidence has demonstrated that the Claimant is not substantially; gainfully employed and thus is not disqualified at Step 1. Based upon the medical evidence presented and outlined above the Claimant has demonstrated a severe impairment and thus has satisfied Step 2. As regards Step three, however, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listings 6.02 Impairment of Renal Function, 1.04 Disorder of the Spine, 12.04 Affective Disorders (Depression), Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work and Step 4 will be considered.

In the present case, Claimant has been diagnosed with low back pain, chronic renal failure, GERD, severe fatigue and high blood pressure, heart disease and mental impairment of depression. 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 noted limits on sitting and indicated That Claimant was capable of only occasionally lifting less than 10 pounds. The examiner also was restricted from using her feet legs operating foot controls on right and noted left knee osteoarthritis. This physician noted chronic pain. and cited as a medical finding that the opinion was based on acute threshold for pain due to myositis. The treating examiner noted that the Claimant could not meet her needs in the home including bathing laundry and overhead reaching. It was also noted that Claimant was capable of repetitive movements with both her hands/arms.

Claimant credibly testified to the following symptoms and abilities: the Claimant indicated that she needs help with her basic household chores and cannot shop

for herself, she continues to have ongoing back pain, hand pain due to two cysts removed from her left hand, and suffers from throat pain and breathing difficulties. The Claimant takes numerous medications which make her drowsy including neurontin, zocor, zantac hydroxyzine, vicoden, and xanax. The Claimant testified that due to pain she could stand for no more than 5 minutes and sit only a few minutes and could walk less than one block. Claimant has ongoing edema with her right foot and ankle such that she cannot put a shoe on. The Claimant credibly testified that she could not carry more than five pounds. The Claimant is also obese weighing 212 pounds at the time of the hearing and is 5'6". Her ability to sleep is limited 4 hours per night due to pain, and anxiety. Claimant is tired and fatigued often and stays in her home most of the time. The extreme fatigue is noted several times throughout her medical records.

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 varied and consisted of working as a telemarketer, an in store sales representative, and as a broadcast programmer. Claimant also worked in phone sales for American Water Systems, working with children assisting teachers. The claimant was also a parking lot cashier and attendant. The Claimant's past relevant work can be characterized as sedentary unskilled, for telemarketing, phone sales and parking lot cashier. The remaining jobs were semi skilled sedentary work, including broadcast programming, and working as an assistant to teachers. The Claimant's skills are not transferable.

This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations, specifically the claimant's treating physician's assessment 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 57 years old and, thus, considered of advanced age for MA-P purposes. The Claimant has a high school education. 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 perform 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).

The Claimant's treating physician has indicated that she considers the Claimant's condition to be deteriorating and has imposed restrictions on lifting and standing and found that the Claimant needs assistance with many activities, including bathing, laundry and overhead reaching. It is well established that the evaluations and conclusions of the treating physician are "controlling" if 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). This doctor also found that Claimant had severe heart disease Class IV and indicated that physical activity should be markedly limited. Deference was given by the undersigned to objective medical testing, and the ongoing observations and opinions of the Claimant's treating physician.

The objective medical evidence provided by the Claimant's treating primary care physician places 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 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.

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 Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. 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 or RSDI 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, the Claimant is found disabled for purposes of the 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 October 13, 2011, and the Claimant's retro application (July 2011) and SDA if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for any SDA benefits the Claimant is otherwise eligible to receive 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

2012-49941/LMF

Date Signed: March 1, 2013

Date Mailed: March 1, 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/tm

cc:

[REDACTED]
L&S
Oakland County DHS (04)/1843
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L. Ferris