

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

IN THE MATTER OF:



Reg. No.: 2012-52034
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: July 23, 2012
County: Wayne (15)

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 July 23, 2012 from Detroit, Michigan. Participants on behalf of Claimant included 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") benefit 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 February 12, 2012, Claimant applied for MA-P and SDA.
2. On May 1, 2012 the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant notice of the Notice of Case Action dated on May 1, 2012 denying the Claimant's MA-P and SDA application. Exhibit 1
4. On May 4, 2012 Claimant submitted to the Department a timely hearing request.

5. June 21, 2012 the State Hearing Review Team (SHRT) found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on July 26, 2012 ordering the Department to complete the medical documents in the file for missing pages and ordered the following:
 - a. The Department shall obtain and submit Page 1 of the Mental Status Examination completed [REDACTED] Exhibit 1 p. 4-7 admitted at the hearing.
 - b. The Department shall obtain and submit a DHS 49 E Mental Residual Capacity Assessment from the examiner that completed the Mental Status Examination, [REDACTED] as referenced in paragraph 1 above.
 - c. **The Department shall also obtain and submit the medical evidence regarding the Claimant's left breast mass submitted to the Medical Review Team in response to Claimant's [REDACTED] new application for MA-P and SDA.**
7. The evidence as Ordered in the above paragraphs was not obtained by the Department.
8. At the time of the hearing the Claimant was [REDACTED]. The Claimant is now [REDACTED] years old with a birth date of [REDACTED]. The Claimant at the time of the hearing was 5'2" in height and weighed 206.
9. Claimant completed education through the 12th grade.
10. Claimant has employment experience (last worked [REDACTED] as a home care and chore care provider and housekeeping. The Claimant also performed factory work including glass recycling, stamping plant parts installing, quality control in a heat treat plant, and parts inspection.
11. Claimant's limitations have lasted for 12 months or more.
12. Claimant alleges physical disabling impairments due to arthritis, back and neck pain, muscle spasms and numbness secondary to chiari malformation.
13. The Claimant alleges mental disabling impairments due to depression.
14. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping, pushing and pulling.

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 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).

The Claimant has alleged physical disabling impairments due to arthritis, back and neck pain, muscle spasms and numbness in both feet, hands and legs secondary and residual to chiari malformation. The Claimant also has a left breast mass which inhibits her from lying on left side and cannot lift or bend as well as pain in her chest and back on left. The Claimant's left knee also goes out unexpectedly causing her to fall.

The Claimant alleges mental disabling impairments due to major Depression.

A summary of the medical evidence follows.

A consultative medical examination was conducted on [REDACTED]. At the time the Claimant was seen, the report noted severe back and hip arthritis. The report notes a craniotomy was performed involving a posterior fossa decompression of the foramen magnum, C1 laminectomy, duraplasty and patch dural repair was performed in 2005. MRI studies were also reviewed as part of the examination. The exam noted chronic low back pain as well related to the chiari malformation in her neck area. An MRI of the cervical spine shows an extensive syrinx from C-1 C-2 level to the T4 level the greatest diameter slightly decreased since the prior study. The Claimant was able to perform heel toe walk and tandem walk slowly. Flexion of knees was 0-150 and straight leg raising was 0-50 lying down and 0-90 while sitting. The impression was continuing chronic pain in the posterior cervical area. Arthritis in multiple joints. Medical source statement: Based upon history and exam, examinee will need long term ongoing follow up for her multiple disorders including chiari malformation. Claimant should avoid lifting, bending, pushing and pulling. Pain was noted when evaluating neurologic and orthopedic abilities. Based upon an x-ray there were minimal degenerative osteoarthritic changes of the left knee and minimal narrowing of the medial knee joint.

Another Medical Examination Report was conducted on [REDACTED] without the benefits of the Claimant's medical records and does not note chiari malformation. The exam finds the Claimant can frequently lift 50 pounds or more and no further limitations except pushing and pulling. This examination is not considered accurate in light of the examination with medical records one month later referenced above, and in light of the other medically documented findings of that examination which is deemed more complete.

A mental status examination diagnosed the Claimant with depression secondary to general medical condition. The GAF score was 51. The prognosis was fair. Medical Source Statement provided that the Claimant demonstrated intact capacity to

concentrate as evidenced by performance on calculational task, and also significant strengths in immediate memory and the ability to pay attention, along with slight problems in short term memory. She displayed strengths in abstract thinking and variability in terms of the capacity for judgment and impulse control. She would appear capable of engaging in work-type activities of a relatively high degree of difficulty remembering and executing a multiple step procedure on a sustained basis, insofar as her physical condition allows. The Department was ordered to obtain the first page of the consultative mental status examination report as well as a completed Mental Residual Functional Capacity Exam which was not provided to the undersigned by the Department.

The Department was ordered to obtain medical evidence presented by the Claimant regarding the left breast mass which was submitted to the MRT as part of a [REDACTED] application but the medical evidence as ordered was not provided to the undersigned by the Department.

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. Listing 1.04 Disorder of the Spine, 12.04 Affective Disorders (Depression) were considered and were found not to be met. 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 arthritis, back and neck pain, muscle spasms and numbness in both feet, hands and legs secondary and residual to chiari malformation. The Claimant also has a left breast mass which inhibits her from lying on left side and cannot lift or bend as well as pain in her chest and back on left. It is noted that chiari malformation is very rare and occurs in about 1% of the population. The symptoms include neck pain that radiates down the spine and vague pain throughout the body.

Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant credibly testified to the following symptoms and abilities: pain, spasms in legs, hands, feet and back, can stand 5 minutes, can walk two blocks, cannot lift anything over 3 to 5 pounds and needs help with tying her shoes, needs assistance showering. Her ability to sleep is limited, is restless at night due to pain, constant pain in back and chest due to breast mass. Claimant can sit 30 minutes, problems with pain when attempting to bend over, gets help with household chores, gets help with grocery shopping, does not drive. Lastly, Claimant is tired a lot and fatigued and stays in her home most of the time. The Claimant also has gained at least 40 pounds.

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 in home care, housekeeping and factory work. Most of the factory work involved lifting 20

to 30 pounds or sitting and standing doing parts inspection or sorting. Claimant was capable of lifting weight in excess of 20 lbs and performing basic chores. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical 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 is currently [REDACTED] years of age, thus, considered to be a younger individual 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 substantiate 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 even basic work activities. The objective medical evidence provided by the Claimant's medical history and medical examination reports 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 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 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.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of February 10, 2012.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated February 10, 2012 if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for any benefits the Claimant is otherwise entitled to receive in accordance with Department policy.
3. A review of this case shall be set for February 2014.


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

Date Signed: February 25, 2013

Date Mailed: February 25, 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

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