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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-19186
Issue No.: 2009, 4031
Case No.: [redacted]
Hearing Date: April 18, 2013
County: Wayne (82-57)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on April 18, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [redacted].

ISSUE

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

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 29, 2012, Claimant applied for MA-P and SDA.

2. On November 29, 2012, the Medical Review Team denied Claimant's request.

3. On December 12, 2012, Claimant submitted to the Department a request for hearing.

4. The State Hearing Review Team (SHRT) denied Claimant's request.

5. Claimant is 39 years old.

6. Claimant completed education through high school plus two years of college.

7. Claimant has employment experience (last worked 2011) as a hair stylist, waitress and daycare worker.

8. Claimant's limitations have lasted for 12 months or more.

9. Claimant suffers from back pain, migraines and fibroid uterus.

10. Claimant has some 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).

The SDA program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10, *et seq.,* and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

The Department conforms to State statute in administering the SDA program.

> 2000 PA 294, Sec. 604, of the statute states:
>
> Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:
>
> (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
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> (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, disability is defined as:

> ...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual’s current work activity, the severity of the impairment,

the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with back pain, migraines and fibroid uterus. 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 meet her own needs in her own home. This physician did note a restriction in regards to heavy lifting on the DHS-49 completed on [redacted]. Department Exhibit 1, p. 22. Claimant's physician indicated the only diagnosis as back pain. No reference was made to any tests, x-rays or laboratory findings.

Claimant was examined by a consulting physician on [redacted]. This physician noted migraines associated with nausea and photophobia along with chronic back pain. This consultant noted that Claimant did request to stand up due to pain from sitting. She noted that Claimant was capable of tandem walk and toe walk, but did so very slowly. Claimant was able to bend and squat 70% of the distance and recover slowly. This physician noted that Claimant would have difficulty with prolonged standing, stooping, squatting, lifting and bending. Claimant would also, according to this consultant, have difficulty with heavy lifting, bending, pushing and pulling.

On [redacted], Claimant's radiology report indicated that Claimant's lumbar spine was normal. It was noted that Claimant's bone mineralization was normal, alignment was normal, and normal lordotic curvature through lumbar region. Vertebral bodies and disc spaces were normal. No evidence of fracture or subluxation. Adjacent soft tissues were within normal limits.

Claimant testified the following symptoms and abilities: nausea, really weak, left and right sides of her head, pain going down neck, lower back pain, abdominal cramping and pain, sensitive to noise and light, wears sunglasses to reduce lighting issues, walks slowly to avoid back pain, can walk up to 100 feet, can stand 30 minutes, can sit 15 minutes, no issue with grip and grasp, no medical restriction on lifting, painful to bend and stoop, needs help with household chores, able to manage showering on her own, not able to use a bathtub, can manage going to the bathroom on her own, needs help with grocery shopping, not able to drive due to no license and now experiencing nose bleeds occurring seven times since [redacted].

Claimant's testimony regarding the degree and severity of restriction of her ability to perform basic daily activities is not supported by objective medical evidence. The evidence does support some limitation on Claimant's ability to lift, stand, stoop and bend but not to the degree Claimant alleges.

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 hair stylist, waitress and daycare worker. These required Claimant to be capable of bending, stooping, and standing for prolonged periods of time. 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. 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).
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> 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).

> Medi um work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carryi ng of objects weig hing up to 25 pounds. If someone can do medium work, we d etermine that he or she can als o do sedentary and light work. 20 CFR 416.967(c).
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> Hea y work. Heavy work involves lifting no m ore than 100 pounds at a time with frequent lifting or carryi ng of objects weig hing up to 50 pounds. If some one can do heavy work, we d etermine that he or she can als o do medium, light, and sede ntary work. 20 CFR 416.967(d).

See *Fe ton v DSS* 161 Mich App 690, 696 (1987). Once the claimant makes it to the final step of the analysis, the claimant has already establis hed a *prima facie* case of disabilit y. *Richards on v Secretary of Health and Human Ser vices*, 735 F2d 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the St ate to prove by substantial evidence that the laimant has the residual functio n capacity for SGA.

This Administrativ e Law Judge finds that Claiman t has the r esidual functional capacity to perform work o n a sedentary level. The objecti ve medical evidence fails to support a finding of less than sedentary ability.

Claima nt is an individual of younger age. 20 CFR 416.963. Claimant has a high school educati on. 20 C FR 416.964. Claimant's previous work as semi-skilled; however, these skills are n ot transferable. Federal Rule 20 CFR 40 I, Subpart P, Appendix 2, contain s specific profiles for determining disability based on residual functional capacity and vo cational profiles. Under Table I, Rule 201.28, Claimant is not disabled for purpos es of the M edical Assistance and State Disability Assistance programs.

DECISION AND O RDER

The Ad ministrativ e Law Judge, based upon the a bove findin gs of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordi ngly, the D epartment's decision is hereby UPHELD.

Jonathan W. Owens
Administrative Law Judge
f or Maura Corrigan, Director
Dep artment of Human Services

Date Si gned: June 17, 2013

Date Mailed: June 17, 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 affect the substantial rights of the claimant,
  - failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JWO/pf

cc: [redacted]