

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

**IN THE MATTER OF:**

FRANCESCA FREEMAN  
23180 MARINE AVE  
EASTPOINTE, MI 48021

Reg No: 2013-29451  
Issue No: 2009, 4031  
Case No: 116350896  
Hearing Date: May 23, 2013  
Macomb County DHS (20)

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

**DECISION AND ORDER**

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, a telephone hearing was held on May 23, 2013. Claimant appeared and testified. The Department was represented by Stacy Zwicker.

**ISSUE**

Did the Department properly deny Claimant's Medical Assistance (MA) and State Disability Assistance (SDA) applications?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA-P and SDA on December 26, 2012 with a request for retroactive coverage back to September 2012.
2. The Medical Review Team denied the application on February 1, 2013.
3. Claimant filed a request for hearing on February 1, 2013 regarding the MA and SDA denials.
4. A telephone hearing was held on May 23, 2013.
5. On April 19, 2013 the State Hearing Review Team denied the application because the medical evidence of record indicates that the Claimant retains the capacity to perform sedentary exertional tasks.
6. Claimant is 5' 1" tall and weighs 107 pounds.

7. Claimant is 50 years of age.
8. Claimant's impairments have been medically diagnosed as pancreatoduodenectomy and depression.
9. Claimant has the following symptoms: pain, fatigue, insomnia, memory and concentration problems, and dizziness.
10. Claimant completed high school and some college.
11. Claimant is able to read, write, and perform basic math skills.
12. Claimant is not working. Claimant last worked full time in June 2012 as a customer service representative.
13. Claimant lives with a friend.
14. Claimant testified that she cannot perform household chores.
14. Claimant takes the following prescribed medications:
  - a. Creon
  - b. Xanax
  - c. Ambien
  - d. Tramadol
15. Claimant testified to the following physical limitations:
  - i. Sitting: 120 minutes
  - ii. Standing: 30 minutes
  - iii. Walking: 200 yards
  - iv. Bend/stoop: some difficulty
  - v. Lifting: 5 lbs.
  - vi. Grip/grasp: no limitations
16. Claimant testified to experiencing pain at a high level of 10 on an everyday basis with some pain always present at a low level of 5.
17. Claimant's treating physician Dr. Gerald Levinson completed a statement that reads as follows: "Over the last several years she has had numerous episodes of abdominal issues with some periods of transient pancreatitis, relentless abdominal pain, gastroesophageal reflux, anorexia, and weight loss. Because of these persistent and chronic changes post total colectomy and Whipple's procedure for her diagnosis of familial polyposis. She has also developed a significant anxiety and depression syndrome. It is because of these chronic postoperative issues and related chronic

relentless pain with the associated symptoms of weight loss, fatigue, anorexia, and extreme anxiety and depression that she has been unable to keep a full time job or work a full time schedule. It is in this regard that I feel that, although she is only 50 years old, because of this unfortunate and extensive medical history, that she should be eligible for some form of Social Security disability.”

18. In a psychological examination report dated September 2012 Claimant was found to have a GAF score of 60 with diagnoses of depressive disorder, general anxiety disorder and panic disorder.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA-P) program 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 the MA-P program 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 Program Reference Manual (PRM).

The State Disability Assistance (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 the Bridges Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Bridges Reference Manual (PRM).

The Department conforms to state statute in administering the SDA program. 2000 PA 294, Sec. 604, of the statute states:

- (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.
- (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 the MA-P program. 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.

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Claimant is not working, therefore, the Claimant is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits

an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, reaching carrying or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 11.02 and 11.03 were considered.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

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, the Claimant's past employment was as a customer service representative. Working as a customer service representative as described by Claimant at hearing would be considered sedentary work. The Claimant's impairments would prevent him from doing past relevant work because he is not able to do the requisite sitting, standing and lifting for sedentary work. This Administrative Law Judge will continue through step 5.

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).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6<sup>th</sup> Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial

evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations.

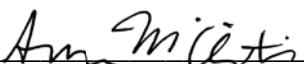
Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA-P and SDA program as of September 2012. Claimant's testimony regarding her limitations and ability to sit, stand, walk, lift and carry is credible and supported by substantial medical evidence and the assessment of her treating physician. Claimant also has psychological problems that are substantially limiting.

Therefore, Claimant is found to be disabled.

### **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 2012.

Accordingly, the department's decision is hereby **REVERSED** and the Department is **ORDERED** to initiate a review of the application for MA, Retro MA and SDA dated December 6, 2012, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for June 2014.

  
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**Aaron McClintic**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 06/14/2013

Date Mailed: 06/14/2013

**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

AM/kl

cc: FRANCESCA FREEMAN  
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