





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). 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 his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR

416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the claimant's alleged impairment(s) is considered under Step 2. The claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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
6. Dealing with changes in a routine work setting.

*Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, the Claimant alleges physical disability due to diabetes mellitus, chronic back pain, hypertension, nausea and vomiting and abdominal pain, migraine and gastroparesis.

The Claimant has alleged mental disabling impairments due to depression.

A summary of the medical evidence presented follows.

A consultative psychiatric examination was conducted on [REDACTED]. The diagnosis was mood disorder due to psychological features. The GAF score was 65 and the examiner found that Claimant had the mental ability to relate to others, including fellow workers and supervisors, ability to understand and carry out simple tasks, she is able to perform simple repetitive tasks as well as complex tasks. She would have little or no difficulty with familiar routine tasks. Claimant had ability to maintain attention, concentration, persistence and pace to perform routine tasks and was mildly impaired in this ability. She may not be able to maintain focus effectively on what she is doing if she has a lot of distracters. The ability to withstand the day to day stress and pressures of work activity is moderately impaired because of her preoccupation with her somatic concerns which may interfere with her functioning. She has the ability to manage her own funds. Prognosis was dependent on motivation to be productive.

A consultative Residual Functional Capacity Examination was also performed on [REDACTED]. The Claimant was evaluated as not significantly limited in all categories except the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without unreasonable number and length of rest periods which was moderately limited.

On [REDACTED] the Claimant was admitted for a three day stay due to dehydration, nausea and vomiting and diabetic ketosis without evidence of acidosis, leukocytosis rule out sepsis. The Claimant was treated for diabetic ketoacidosis with raised anion gap, and chronic back pain and vomiting and nausea. The notes indicate a prior admission in [REDACTED]

The Claimant was seen in the emergency room [REDACTED] due to abdominal pain and vomiting. The final impression was diabetes, gastroparesis chronic abdominal pain. Due to the similar symptoms of prior admissions the Claimant was given a shot of dilaudid and sent home with additional medication. Final diagnosis was diabetes, gastroparesis, and chronic abdominal pain.

On [REDACTED] the Claimant was seen in the emergency department due to multiple incidents of vomiting. The Claimant had potassium replaced and given nausea medication and discharged. The diagnosis was gastroparesis.

On [REDACTED] the Claimant was seen in the emergency room in a lethargic arousable state by EMS after taking prescribed medication. The final diagnosis was adverse drug reaction to soma.

On [REDACTED] the Claimant was admitted for a one day hospital stay complaining of nausea and vomiting. Final impression was nausea and vomiting secondary to gastroparesis.

On [REDACTED] 2012 the Claimant was seen for vaginal bleeding and had been seen earlier in the day at the emergency room. The Claimant was discharged home with final impression of urinary tract infection, acute chronic abdominal pain, chronic nausea or vomiting. The diagnosis was abdominal pain with history of gastroparesis, hypokalemia and hyperglycemia with history of diabetes.

On [REDACTED] the Claimant was seen in the emergency room with nausea and vomiting and abdominal pain. The Claimant had presented the night before with the same symptoms. Diagnosis was acute exacerbation of diabetic gastroparesis with persistent nausea, vomiting and abdominal pain.

The Claimant was admitted for a two day hospital stay on [REDACTED] for nausea and vomiting with diagnosis of headaches with migraine history and diabetes, thrombocytosis, tachypnea with hypertension and chronic back pain and high glucose level 353. After two days of treatment for vomiting and nausea and pain was discharged home. As part of the discharge the Claimant was advised that she would no longer be receiving narcotic medications.

On [REDACTED] the Claimant was admitted for a four day hospital stay due to nausea and vomiting and had also been hospitalized earlier in the month [REDACTED] [REDACTED] for a two day stay with the same or similar symptoms. The Claimant was advised that she exhibited narcotic seeking behavior and that she would not be given narcotics for pain any longer. A gastric emptying study was performed with result of accelerated

pattern of gastric emptying. Study was found negative for gastroparesis. The Claimant was placed on the no narcotics list.

On [REDACTED] the Claimant was seen in the emergency room with complaint of vomiting and nausea with abdominal pain. Notes indicate that the Claimant was seen for same complaint on [REDACTED]

On [REDACTED] the Claimant was admitted to the hospital for a two day stay due to uncontrolled diabetes mellitus, and was admitted due to vomiting and nausea. Admission notes that patient looked very ill and in severe pain and was continuously throwing up. The impression was intractable nausea and vomiting with abdominal pain, recurrence of her gastritis with possible underlying gastroparesis, uncontrolled diabetes, hypertension and hypokalemia, tachycardia and clinical dehydration. Glucose was 261, high. The Claimant was discharged home with a new medication regimen. The Claimant was discharged home improved.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that she does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, 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. The Claimant has alleged physical impairments due to diabetes mellitus, chronic back pain, hypertension, migraine and nausea and vomiting and abdominal pain, and gastroparesis. The Claimant has alleged mental disabling impairments due to depression. There was no objective medical evidence presented to substantiate the Claimant's back pain.

Listing 12.04 Affective Disorders (depression) and Listing 9.00 Endocrine Disorders (Diabetes mellitus and other pancreatic gland disorders), 9.00 (5) a and b were considered in light of the objective medical evidence. Ultimately it was determined that the Claimant did not meet either listing. Additionally, a review of the listing for 9.00 Endocrine Disorders alternatively requires that the diabetes mellitus must have effects that meet or medically equal the criteria of any listing in other body systems. As the Claimant did not meet any of the specific listings or any listing for other parts of the body the listing was not met. A review of the psychological examination report indicates that

the Claimant has not treated for depression and is not significantly limited in 19 of the 20 categories evaluated in the Mental Residual Functional Capacity Assessment, the GAF score was 65 and the prognosis was dependent on the Claimant's motivation to be productive. In this case the medical evidence presented and discussed above regarding the Claimant's alleged impairments did not meet the intent and severity of a listing.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or



more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment working in retail sales, selling furniture and clothing. The Claimant also last worked as a home health care provider and is certified to do this work. Although the Claimant did not specifically enumerate her responsibilities as a home health care provider, the work did require transfer of clients, cooking, cleaning, shopping and transporting clients. The Claimant testified that she could no longer do transfer of patients. The Claimant last worked in February 2011. At the time of the hearing the Claimant testified that she was receiving unemployment compensation benefits. The Claimant's past relevant work would be unskilled light and semi-skilled medium work.

The Claimant takes pain relief medication and insulin, as well as medications for high blood pressure. The Claimant's testimony that she can walk a block, sit for an hour and stand for 15 minutes is not supported by any objective medical evidence which would impose these limitations. A DHS 49 was ordered to be obtained by the Claimant's AHR from the Claimant's treating physician but was not received, thus no medical evidence was provided to assist in determining physical limitations based upon medical, clinical and physical examination of the Claimant. Further, the Claimant's pain level, also

subjective, indicates a pain level of 9 without medication and 4 with medication. Also of concern was the notation in several hospital admissions that the Claimant was a drug seeking patient which was significant as the then treating doctors on several occasions, discussed the problem with the Claimant and withdrew narcotic treatment for pain relief. This treatment decision to withhold narcotics was based at least in one instance upon a drug test performed in [REDACTED]. The Claimant testified to neuropathy in her legs and hands cramping but no complaints of these symptoms were present in any of the numerous hospital admissions and emergency room visits. Lastly the Claimant testified that she last worked in [REDACTED] but at the time of the hearing was receiving unemployment compensation benefits. Receipt of unemployment compensation benefits requires the recipient to certify to the governmental body administering the program that they are work ready and seeking work. Based upon the lack of objective medical evidence to support physical limitations based upon Claimant's medical conditions it is determined that the Claimant could return to her past relevant work as a home health care aide or as a sales associate.

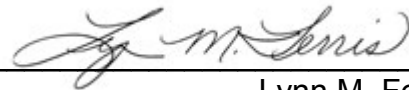
In this case, the Claimant is found not disabled for purposes of the MA-P program.

#### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P.

Accordingly, It is ORDERED:

The Department's determination is AFFIRMED.



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

Date Signed: July 19, 2013

Date Mailed: July 19, 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

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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/cl

cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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