

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

IN THE MATTER OF:



Reg No.: 2013-37972
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 7, 2013
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

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, a telephone hearing was held in Lansing, Michigan on August 7, 2013. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED] [REDACTED]

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") 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. On February 7, 2013, the Claimant submitted an application for public assistance seeking MA-P benefits.
2. On March 12, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit A, pp. 1, 2)
3. On March 18, 2013, the Department notified the Claimant of the MRT determination.
4. On March 25, 2013, the Department received the Claimant's written request for hearing.
5. On June 11, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit B)

6. The Claimant alleged physical disabling impairments due to seizures, migraines, chronic back pain, and high blood pressure. (Exhibit A, p.3)
7. The Claimant alleged mentally disabling impairments due to depression, anxiety and panic attacks. (Exhibit A, p.3)
8. At the time of hearing, the Claimant was 52 years old with a [REDACTED] birth date; was 5'8" in height; and weighed 165 pounds.
9. The Claimant has a Bachelor of Arts degree in marketing/advertising and previously worked as a sales associate at [REDACTED] and event planner for [REDACTED] [REDACTED]

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Tables ("RFT").

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.¹ 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.² An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability.³ 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.⁴

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

¹ 20 CFR 416.905(a).

² 20 CFR 416.913.

³ 20 CFR 416.908; 20 CFR 416.929(a).

⁴ 20 CFR 416.927.

do basic work activities.⁵ 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.⁶

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized.⁷ 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 (i.e. age, education, and work experience) to determine if an individual can adjust to other work.⁸

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.⁹ If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required.¹⁰ If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four.¹¹ Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence.¹² An individual's residual functional capacity assessment is evaluated at both steps four and five.¹³ 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.¹⁴ In general, the individual has the responsibility to prove disability.¹⁵ 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.¹⁶ 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.¹⁷

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. Therefore the Claimant 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

⁵ 20 CFR 416.929(c)(3).

⁶ 20 CFR 416.929(c)(2).

⁷ 20 CFR 416.920(a)(1).

⁸ 20 CFR 416.920(a)(4); 20 CFR 416.945.

⁹ 20 CFR 416.920(a)(4).

¹⁰ 20 CFR 416.920(a)(4).

¹¹ 20 CFR 416.920(a)(4); 20 CFR 416.945.

¹² 20 CFR 416.945(a)(1).

¹³ 20 CFR 416.920(a)(4).

¹⁴ 20 CFR 416.994(b)(1)(iv).

¹⁵ 20 CFR 416.912(a).

¹⁶ 20 CFR 416.921(a).

¹⁷ 20 CFR 416.912(c)(3)(5)(6).

substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe.¹⁸ 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.¹⁹ Basic work activities mean the abilities and aptitudes necessary to do most jobs.²⁰ 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.

The second step allows for dismissal of a disability claim obviously lacking in medical merit.²¹ The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint.²² 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.²³

In the present case, the Claimant alleges disability due to seizures, migraines, chronic back pain, high blood pressure, depression, and anxiety and panic attacks.

On January 21, 2011, the Claimant was seen at the [REDACTED] with complaints of chest pain, anxiety and depression. The Claimant told the medical staff she had a history of hypertension and depression and had been out of her medications for some time. An EKG showed sinus tachycardia with normal intervals and a left axis deviation. There were no findings of acute ischemic abnormality. An x-ray was also negative. The Claimant was discharged home in stable condition. (Department Exhibit A, pp. 105–122)

On December 10, 2012, the Claimant was seen at the [REDACTED] emergency department with complaints of a possible anxiety attack or seizure and secondary

¹⁸ 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b).

¹⁹ 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c).

²⁰ 20 CFR 416.921(b).

²¹ *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988).

²² *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

²³ *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

complaints of a migraine. The Claimant told the treating physician that at the time of the possible seizure she was out of her medication for Xanax and Vicodin. A CT scan was taken of the Claimant's head and it came back negative. The Claimant was eventually discharged in stable condition. (Department Exhibit A, pp. 14-38)

On January 5, 2013, the Claimant was admitted to the [REDACTED] emergency room with complaints of an altered mental status with possible seizure and acute migraine. CT, MRI and EEG scans came back as unremarkable. The claimant was alert and oriented and did not appear in distress but complained of pain on the right side of her head and scalp. During the Claimant's stay, it was suspected the Claimant was overusing her benzodiazepine and opiate medications and this likely the cause of the recurring seizure like activity. (Department Exhibit A, pp. 39 – 96)

Several times in 2011 and 2012, the Claimant reported to the emergency room at [REDACTED] complaining of back pain and indicating she had run out of her medication. On one occasion (January 15, 2012), the treating doctor ran a MAPS report which showed the Claimant filling the prescription 6 days prior to her emergency room visit. The Claimant reported to be in significant pain (lower back) with a pain level of 8-9 but when the hospital refused to provide additional medication, the Claimant walked out of the hospital with a steady gait and without distress. (Department Exhibit A, pp. 183-190)

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 medical evidence establishing that she does have some physical limitations on her 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 evidence confirms treatment/diagnoses of back pain, hypertension, seizures, migraines, depression, anxiety and panic disorders.

Listing 1.00 (musculoskeletal system), listing 11.00 (neurological-adult) and listing 12.00 (mental disorders), specifically listing 1.04 (disorders of the spine), 11.02 (epilepsy – convulsive), 11.03 (epilepsy – non-convulsive), 12.04 (affective disorders), 12.06 (anxiety related disorders) were considered in light of the objective medical evidence. Although the objective medical records establish physical impairments and mental disorders, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant cannot be found disabled or not disabled at Step 3; therefore, the Claimant's eligibility is considered under Step 4.²⁴

²⁴ 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made.²⁵ An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s).²⁶ The total limiting effects of all the impairments, to include those that are not severe, are considered.²⁷

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy.²⁸ 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.²⁹ 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.³⁰ 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.³¹ 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.³² 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.³³ An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time.³⁴ Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds.³⁵ An individual capable of performing medium work is also capable of light and sedentary work.³⁶ Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds.³⁷ An individual capable of heavy work is also capable of medium, light, and sedentary work.³⁸ 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.³⁹ An individual capable of very heavy work is able to perform work under all categories.⁴⁰

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting,

²⁵ 20 CFR 416.945.

²⁶ *Id.*

²⁷ 20 CFR 416.945(e).

²⁸ 20 CFR 416.967.

²⁹ 20 CFR 416.967(a).

³⁰ *Id.*

³¹ 20 CFR 416.967(b).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ 20 CFR 416.967(c).

³⁶ *Id.*

³⁷ 20 CFR 416.967(d).

³⁸ *Id.*

³⁹ 20 CFR 416.967(e).

⁴⁰ *Id.*

carrying, pushing, or pulling) are considered nonexertional.⁴¹ In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work.⁴² 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.⁴³ Examples of non-exertional limitations or restrictions include difficulty to 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 (i.e. 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.⁴⁴ 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.⁴⁵ 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 2.⁴⁶

In this case, after review of the entire record and considering the Claimant's testimony, it is found, at this point, that the Claimant maintains the residual functional capacity to perform at least skilled/semi-skilled, light work using vocational rule 202.15.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment.⁴⁷ An individual is not disabled if he/she can perform past relevant work.⁴⁸ 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.⁴⁹ Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered.⁵⁰

The Claimant has previously been employed as a sales promotion representative (269.357-018). Therefore, in light of the entire record, it is found that the Claimant is able to perform past relevant work and therefore denied at step four.

In Step 5, an assessment of the Claimant's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made.⁵¹ At the time of hearing, the Claimant was 52 years old and,

⁴¹ 20 CFR 416.969a(a).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 20 CFR 416.969a(c)(1)(i) – (vi).

⁴⁵ 20 CFR 416.969a(c)(2).

⁴⁶ *Id.*

⁴⁷ 20 CFR 416.920(a)(4)(iv).

⁴⁸ *Id.*; 20 CFR 416.960(b)(3).

⁴⁹ 20 CFR 416.960(b)(1).

⁵⁰ 20 CFR 416.960(b)(3).

⁵¹ 20 CFR 416.920(4)(v).

thus, considered to be approaching advanced age for MA-P purposes. The Claimant is a college graduate. 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 obtain substantial gainful employment.⁵² 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.⁵³ 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.⁵⁴

In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform light work as defined in 20 CFR 416.967(b). After review of the entire record, finding no contradiction with the Claimant's non-exertional limitations, and in consideration of the Claimant's age, education, and RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.15, the Claimant is found not disabled at Step 5.

With regard to Claimant's request for disability under the State Disability Assistance (SDA) program, it should be noted that the Department's Bridges Eligibility Manual (BEM) contains policy statements and instructions for caseworkers regarding the SDA program. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older."⁵⁵ Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not show that Claimant is unable to work for a period exceeding 90 (ninety) days, Claimant is also not disabled for purposes of the SDA program.

The Department has established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Claimant was not eligible to receive Medical Assistance or State Disability Assistance.

⁵² *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984).

⁵³ *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

⁵⁴ *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

⁵⁵ BEM, Item 261, p. 1.

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 and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



Corey A. Arendt
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 20, 2013

Date Mailed: August 20, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;

- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

CAA/las

cc:

