

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

**IN THE MATTER OF:**

██████████  
████████████████████  
████████████████████

Reg. No.: 2012 11863  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: March 25, , 2013  
County: Oakland County DHS (02)

**ADMINISTRATIVE LAW JUDGE:** Lynn M. Ferris

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on March 25, 2013, from Madison Heights, Michigan. Participants on behalf of Claimant included the Claimant. A witness for the Claimant, ██████████, also appeared. ██████████, ██████████, ██████████, ██████████, the Claimant's Authorized Hearing Representative, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ES.

**ISSUE**

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) 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 September 13, 2012 Claimant applied for MA-P and retro MA-P (August 2012).
2. On October 23, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated October 26, 2012 denying the Claimant's MA-P application. Exhibit 1

4. On November 6, 2012 Claimant's AHR submitted to the Department a timely hearing request.
5. On January 17, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on March 28, 2013 ordering the Claimant's Authorized Hearing Representative to submit additional medical evidence from the Claimant's primary care physician.
7. The Interim Order also ordered that a consultative examination be scheduled by the Department. The Department was further ordered to schedule a consultative psychiatric examination and obtain completion of a DHS 49 D and E. The Department did not comply with the Interim Order and no consultative examination or mental status examination, consultative psych was received.
8. On November 1, 2013 the State Hearing Review Team denied Claimant's request and found Claimant not disabled.
9. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED]. The Claimant is now [REDACTED] years of age. Claimant's height was 5'2" and weighed 138 pounds. The Claimant has gained 20 pounds within the last six months.
10. Claimant completed the 11<sup>th</sup> grade and a GED. Claimant also went to Pontiac Business School for word processing.
11. Claimant's prior work experience consists of working as a home healthcare provider. The Claimant last worked in 2010. The Claimant also worked at Subway as a manager but can no longer do this job due to her Hepatitis C.
12. The Claimant has alleged mental disabling impairments including anxiety attacks and depression.
13. Claimant alleges physical disabling impairments due to grand mal seizures, closed head injury, Hepatitis C and lower back problem due to a prior disk fusion of her lower back.
14. Claimant's impairments have lasted or are expected to last for 12 months' duration or more.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to

1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) 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.

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).

The Claimant alleges physical disabling impairments due to grand mal seizures, closed head injury, Hepatitis C and lower back problem due to a prior disk fusion of her lower back.

The Claimant alleges mental disabling impairments due to depression and anxiety attacks and closed head injury.

A summary of the Claimant's medical evidence presented at the hearing and the new evidence presented follows.

A DHS 49 was completed by the Claimant's treating physician on [REDACTED]. The examination noted uncontrolled seizures, lumbar radiculopathy, depression, anxiety and Hepatitis C. The doctor completing the form had been treating the Claimant since [REDACTED]. With regard to the musculoskeletal examination the report noted lumbar tenderness and bilateral gait dysfunction. The examiner also noted that Claimant presented with depressed mood. The Claimant's condition was noted as stable and the following limitations were imposed. The Claimant was restricted from lifting even less than 10 pounds, was restricted from standing and/or walking less than two hours in an eight hour workday and was unable to perform any repetitive action with her hands or her arms including simple grasping, reaching, pushing, pulling, and fine manipulation. The Claimant was further restricted from operating foot controls with either leg. The basis for the restrictions were uncontrolled seizures and chronic back pain. A mental limitation was also noted with regard to memory and sustained concentration; however, this aspect of the examination was given lessor value as the Claimant's doctor was not a psychiatrist, however the statement was given some probative value as an evaluation of the Claimant's presentation at the time of the exam and also that these comments were by a physician who was familiar with the Claimant and was her treating physician. . It is noteworthy however that these limitations were noted by a physician who has treated the Claimant for over two years. Additionally, the physician concluded the report finding the Claimant was unable to meet her needs in the home indicating that the Claimant needs 24 hours assistance. A medical needs form also indicated that this duration of Claimant's impairment was ongoing. It was also noted that the Claimant was unable to

drive due to seizures and was driven to her medical appointments. The doctor further noted that the Claimant was unable to work at her usual occupation for the rest of her life and was unable to work in any job for the rest of her life.

Several of the medical records in Claimant's submission note that she suffered breakthrough seizures due to unavailability of her prescribed medications. At the time it was noted the Claimant did not have medical insurance; therefore, such fact cannot be used against her in determining her disability. The Claimant presented to the emergency room on two occasions due to a breakthrough seizure due to failure to obtain her required medications. [REDACTED] Also a witness testified at the hearing that has known the Claimant for many years and indicated that she was in need of assistance which he provided due to her seizure disorder and depression worsening. The witness' testimony was deemed credible.

The Department was ordered to obtain and provide additional new medical evidence, and specifically was ordered to obtain a consultative psychiatric examination and the completion of a DHS 49 D and E, as well as a consultative examination with a neurologist to examine the Claimant for her seizures. The Department did not submit any such examinations. None of the ordered medical evidence was submitted by the Department.

The medical records also indicate that the Claimant was seen by gastroenterologist who noted that treatment for Hepatitis C was contraindicated due to Claimant's anti-seizure medications. The Claimant has treated consistently for Hepatitis C since [REDACTED]

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and her impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 11.03 regarding epilepsy, non-convulsive therapy on, psychomotor or focal was examined, however the listing was not that as there was no independent description of a typical seizure which was verified by testimony of a person other than the Claimant. 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 physical impairments due to grand mal seizures, closed head injury, Hepatitis C and lower back problem due to a prior disk fusion of her lower back.

The Claimant has also alleged mental disabling impairments due to depression and anxiety attacks. No medical evidence was available regarding her condition other than her own testimony and that of her witness. The lack of medical evidence was a result of the Department's failure to comply with the Interim Order ordering a consultative psychiatric examination.

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 stand and walk for less than 2 hours in an 8-hour day, was limited to lifting no weight due to her lower back ongoing pain and her seizure disorder. It was also noted that Claimant was unable to reach or push and pull with both hands.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than 500 feet without taking a rest, she could stand for 10 to 15 minutes, and could sit for 30 minutes but experienced muscle spasm and numbness in her feet and lower legs which turned blue. The Claimant testified she could not easily bend at the waist due to her lack of equilibrium and dizziness. Claimant further testified that she experiences ongoing muscle weakness in both her hands and that she has circulatory problems causing her legs and feet to turn blue. Claimant testified she could carry a gallon of milk approximately 8 pounds in weight. The Claimant testified she could walk no further than a half block, could stand approximately 20 minutes and sit approximately 30 minutes. The Claimant had limited range of motion in her back and requires the assistance of her daughter to shower and dress herself. Claimant further testified to ongoing pain due to her lower back problems. The Claimant further testified that she slept much of the day. The Claimant's testimony was deemed credible.

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 performing home healthcare and managing a Subway fast food store requires abilities and capabilities that based on the limitations presented by the Claimant's testimony and her treating physician's evaluation, cannot be any longer achieved by the Claimant. Therefore it is determined that the Claimant is no longer capable of past relevant work. 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 ■ years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has an 11<sup>th</sup> grade education and a GED, and has been restricted with limitations on standing and walking less than 2 hours in an 8-hour workday and sitting less than 6 hours in an 8-hour workday. 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 substantial 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).

The evaluations and medical opinions of a "treating physician" is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physician. After a review of the entire record, including the Claimant's credible testimony and medical evidence presented, and the objective medical evidence provided by the Claimant's treating primary care physician who places the Claimant at less than sedentary activity level, it is determined that 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 even 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). It is also noted that any ambiguities with regard to the Claimant's allegations of disabilities were resolved in favor of the Claimant due to the Department's failure to comply with the Interim Order. 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.

### **DECISION AND ORDER**

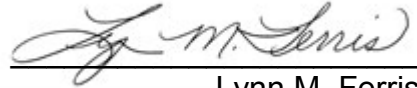
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled.

Accordingly, the Department's decision is hereby REVERSED

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to initiate a review of the application dated September 13, 2012 and retro application for August 2012 if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for November 2014.



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

Date Signed: November 26, 2013

Date Mailed: November 26, 2013

**NOTICE OF APPEAL:** 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.

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).

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

LMF/cl

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