

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

IN THE MATTER OF:

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

Reg. No.: 2013 33841
Issue No.: 2009
Case No.: ██████████
Hearing Date: July 29, 2013
County: Wayne (55)

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 July 29, 2013, from Hamtramck, Michigan. Participants on behalf of Claimant included the Claimant and ██████████, the Claimant's interpreter. ██████████ also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ Assistance Payments Worker.

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 August 29, 2012 Claimant applied for MA-P and retro MA-P (May 2012).
2. On January 16, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated January 24, 2013 denying the Claimant's MA-P application. Exhibit 1

4. On February 27, 2013 Claimant or Claimant's AHR submitted to the Department a timely hearing request.
5. On May 29, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was entered on August 5, 2013 requesting the Claimant's AHR to obtain a DHS 49 from the Claimant's treating doctor.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on October 15, 2013 and the SHRT denied disability on December 2, 2013.
8. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED]. The Claimant is now [REDACTED]. Claimant's height was 5'1" and weighed 120 pounds.
9. Claimant completed the equivalent of a 10th grade education and does not speak English.
10. Claimant has employment experience, having last worked in 1998 in a garment factory sewing sequins on fabric. The Claimant has no other relevant work experience.
11. Claimant alleges physical disabling impairments due to carpal tunnel syndrome on right with foot and hand pain, diabetes mellitus of 12 years duration, hypoglycemia, migraine and severe gastroparesis and peripheral neuropathy associated with diabetes.
12. Claimant has not alleged mental disabling impairments.
13. Claimant's impairments have lasted or are expected to last for 12 months duration or more.

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).

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 carpal tunnel syndrome on right with foot and hand pain, diabetes mellitus of 12 years duration, hypoglycemia, migraine and severe gastroparesis and peripheral neuropathy associated with diabetes.

Although the Claimant alleges no mental disabling impairments in her application her treating physician has noted major depression affecting concentration, memory and social interaction. No medical evidence to support treatment or other evaluation was provided or available.

A summary of the claimant's medical evidence presented at the hearing follows.

The Claimant's treating physician completed a Medical Examination Report on [REDACTED] [REDACTED]. The diagnosis was carpal tunnel syndrome on right with foot and hand pain, diabetes mellitus and hypoglycemia, migraine and gastroparesis and major depression. The Claimant was 5'11" and weight 129 pounds. The medical findings cited were planter fasciitis, carpal tunnel syndrome and peripheral neuropathy. The Claimant was rated as stable. The following limitations were imposed: no lifting of any weight, Claimant could stand or walk less than 2 hours in an 8 hour work day, the Claimant could not perform simple grasping, pushing, pulling and fine manipulation with either hand and could not operate foot controls. The examiner also noted major depression affecting concentration, memory and social interaction. The Claimant was found to be unable to meet her needs in the home and required assistance with cooking, laundry, and shopping.

The Claimant was admitted for a 5-day stay in [REDACTED] due to intractable nausea and vomiting, diabetic gastroparesis, diabetes mellitus with complications of diabetic gastroparesis and peripheral neuropathy. The claimant had a J tube placed for feeding and had post op paralytic ileus and pain. At the time of examination the neurologic exam noted abnormal balance, confusion, numbness and tingling. The gastric emptying study show marked gastroparesis noted as severe. The Final Report showed gastroparesis and malnutrition as the post-operative diagnosis and longstanding diabetes of 12 years.

A Consultative Exam was conducted on [REDACTED]. The exam conducted with an interpreter noted, nerve problems, diabetes, high blood pressure, gastric diabetes, nerve problems in the right side, and back and neck pain. The Impression was nerve problems, neuropathy due to diabetes in her hands and feet, blood pressure under control, gastric problems including nausea and gallbladder removal and back and neck pain with use of pain medication. An exam of the cervical spine notes spur formation at C5-6. Degenerative arthritis of cervical spine. Lumbar spine minute anterior spur formation at L3-4 with degenerative arthritis of the lumbar spine. The examiner imposed no limitations.

In [REDACTED] the Claimant reported to the ER with severe pain and increasing swelling of right lower lip for three days with swelling and fever. The Claimant was treated for folliculitis, and abscess was drained. The Claimant was admitted to the hospital. The Claimant was discharged and given pain medication antibiotic for staph infection.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and has demonstrated impairments which 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. Listings 9.05b.hypoglycemia was reviewed and although the Claimant did have a diagnosis of hypoglycemia, the medical evidence was not sufficient to meet the 9.05 listing when the listing for 11.00 seizures, or 12.00 altered mental status were reviewed. Listing 5.00 Digestive System was also reviewed and based upon the medical evidence submitted the severity of digestive disruptions required by the listing is determined to not be met. 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 by her treating physician with carpal tunnel syndrome on right with foot and hand pain, diabetes mellitus of 12 years duration, hypoglycemia, migraine and severe gastroparesis and peripheral neuropathy associated with diabetes.

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, was noted as unable to push and pull, grasp simple objects and fine manipulation with both hands and unable to operate foot controls. The Claimant was evaluated as stable but required assistance with cooking, laundry and grocery shopping.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than 2 blocks and this would take 15 minutes, she could stand for 20 to 25 minutes, and could sit for 20 minutes and required elevation of her right foot due to swelling. The Claimant could lift no more than a quart of milk. The Claimant testified she could not squat due to lack of strength and must use a shower chair. The Claimant gets dizzy climbing stairs, The Claimant experiences severe fatigue and suffers from extreme nausea, and is nauseated when she wakes up and has difficulty sleeping.

In the fourth step of the analysis the issue 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 many years ago and consisted of sewing sequins on cloth. The Claimant has not performed other work outside of the house other than house work as a homemaker. Given the Claimant's documented limitations with the use of her hands, the Claimant cannot perform any sewing functions she had previously performed. This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations testified by the Claimant and confirmed by his treating doctor's assessment and imposition of limitations, that Claimant is not capable of the physical activities

required to perform any such position and cannot perform past relevant work., and 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 47 years old and is presently ■ and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a 10th grade education, does not speak English and has been restricted from use of her hands and feet due to neuropathy and carpal tunnel syndrome. 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. In addition, the Claimant's evaluation by her treating psychiatrist also painted a picture of someone with severe depression. After a review of the entire record, including the Claimant's testimony and medical evidence presented, and the objective medical evidence provided by the Claimant's treating physician who places the Claimant at less than sedentary, 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 including diabetes mellitus with hypoglycemia of 12 years duration and neuropathies, carpal tunnel syndrome and gastroparesis, which is severe, have a major impact on her ability to perform 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). 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.

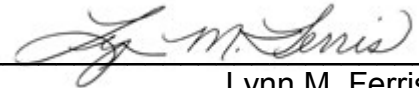
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

Accordingly, the Department's determination is 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 August 29, 2012 and applicable retro period (May 2012) if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for December 2014.



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

Date Signed: December 19, 2013

Date Mailed: December 19, 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.

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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]
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