

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).

The Claimant alleges physical disabling impairments due to chronic low back pain, chronic knee pain, polycystic ovaries, sleep apnea and morbid obesity.

The Claimant has alleged mental disabling impairments due to depression, (Dysthymic Disorder) and anxiety.

A summary of the medical evidence follows.

The Claimant was admitted to the hospital for a 3 day stay in [REDACTED] for severe abdominal pain with nausea and vomiting. The Claimant was given a full work-up and it was determined that the cause was likely due to possible bowel obstruction. The Claimant was discharged in improved condition with some residual pain controlled with pain medication.

A consultative Mental Status Exam was conducted on [REDACTED]. The examiner's diagnosis was dysthymic disorder (depression), panic disorder without agoraphobia, and anxiety disorder. The noted health issues were rated severe and the GAF score was 50. Prognosis was guarded. The examiner found the Claimant's ability to follow, understand and retain simple instructions and perform basic routine tangible tasks was adequate. Interact with others outside of home, supervisors and public appears to be adequate.

The Claimant's treating primary care doctor who has seen the Claimant over the course of several years since 2009 completed a DHS 49 on [REDACTED]. The Claimant's diagnosis was morbid obesity, polycystic ovary syndrome, chronic back pain, chronic knee pain and depression and anxiety. The Claimant weighed 489 pounds on the day of the examination and was 5'7". The examiner noted that the Claimant was deteriorating. The Claimant's treating doctor imposed the following limitations, occasionally lifting less than 10 pounds, stand and/or walk less than 2 hours in an 8 hour work day, sit less than 6 hours in an 8 hour work day. No limitations were imposed with regards to hands or arms, feet or legs. Although the treating doctor does not appear to also be a psychiatrist, he noted mental limitations based upon his observations, noting mental limitations regarding memory, sustained concentration and

social interaction. In [REDACTED], in a signed letter, the same doctor noted in addition to the above conditions that the Claimant also had asthma, was prediabetic and insulin resistant.

A Mental Residual Functional Capacity Assessment evaluation was completed by the Claimant's current treatment facility. The exam was completed by an individual with an MA in Social Work. The assessment finds the Claimant markedly limited in all categories except for ability to ask simple questions, make simple work-related decisions, the ability to be aware of normal hazards and take appropriate precautions, and the ability to set realistic goals or make plans independently of others.

The Claimant has received ongoing treatment for several years at a community mental health facility. She regularly receives medication reviews with her psychiatrist every 2 months. A review of the medical records for this treatment indicates that the Claimant's condition has remained about the same with treatment. The Claimant's GAF score has been consistently 48 and the diagnosis is dysthymic disorder, a form of depression. The medication review was within normal limits.

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 he 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.

Listing 1.04 Disorders of the Spine was reviewed and it was found that the Claimant did not meet the listing as no finding of stenosis or radiculopathy was present and the only medical evidence presented notes, a CT of abdomen at [REDACTED] [REDACTED] notes degenerative changes of the spine.

Listing 12.04 Major Depressive Disorder and 12.06 Anxiety Related Disorders was also considered, but in light of the Claimant's treating psychiatrist's evaluation indicating dysthymic disorder and a GAF score of 48 consistently, which is a lower score, nonetheless, a clear picture of the Claimant's mental status could not be gleaned from the medical records. The individual completing the Mental Residual Functional Capacity Examination was not a psychiatrist or a psychologist and the examination was

not signed by the treating psychiatrist, so it was given little weight. Finally, the consultative examination was helpful as the diagnosis and GAF score of 50 were consistent with Claimant's ongoing treatment evaluations and prognosis was guarded, but the report placed Claimant's overall ability at adequate. The examiner concluded "The Claimant's ability to follow, understand and retain simple instructions and perform basic routine tangible tasks was adequate. Interact with others outside of home, supervisors and public appears to be adequate." Thus based upon the objective medical evidence available it is determined that neither 12.04 nor 12.06 were met.

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 as an in-home care giver. As such, the Claimant performed light household chores, cooking and transportation. The Claimant was also responsible to bathe patients. The Claimant was on her feet part of the time. The average weight she lifted was 10 pounds. Other employment consisted of similar work at an adult foster care facility and a psychiatric treatment center where Claimant passed out medications. This work would be considered unskilled light work and requires standing some off the day.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, light work.

The Claimant credibly testified that she is able to stand no more than 5 to 10 minutes due to knee and back pain. The Claimant used a cane to assist her in walking at the hearing. She can sit only 30 minutes due to back pain and has to move around and cannot sit for a long time. The Claimant is not able to walk any significant distance, about 1 block, due to pain. The Claimant has constant back pain and knee pain with medications pain level is a 5-6. The Claimant needs assistance tying her shoes. The Claimant indicated that she could carry 5 pounds and that her feet and knees swell and she also has difficulty with climbing stairs unless there are two rails on either side of her. Claimant further credibly testified that she can bend at waist, but cannot squat.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work as a home care provider, thus, the fifth step in the sequential analysis is required.

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). The Claimant is [REDACTED] old and, thus, is considered to be a younger individual for MA purposes. The Claimant has the equivalent of a high school education (GED). 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).

In this case the evidence reveals that the Claimant complains of continual back pain and knee pain and is morbidly obese with a BMI of 76. Her treating doctor of 6 years finds that the Claimant is significantly limited in her physical abilities. He indicates that Claimant has significant limitations in her ability to sit and stand and can lift less than 10 pounds only occasionally and noted mental limitations. The Claimant also has mental impairments that have persisted despite treatment and medication with small

improvement. The Claimant's mental impairments have existed for several years and although not markedly limited in all categories, her GAF score is 48 and her treating psychiatrist who has treated her since 2011 diagnosed Claimant as having dysthymic disorder.

In this case the evidence and objective findings reveal that the Claimant suffers low back pain, knee pain, both ongoing, mental impairments of depression and extreme obesity. SSR 02-1p, Title II and XVI, Evaluation of Obesity (5/1/2000) states:

When we identify obesity as a medically determinable impairment (see question 4, above), we will consider any functional limitations resulting from the obesity in the RFC assessment, in addition to any limitations resulting from any other physical or mental impairments that we identify.

The objective medical evidence provided by the Claimant's treating doctor and the Claimant place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant, her obesity which is severe, and her ongoing mental impairments and pain, when considered together require a determination that she cannot reasonably be able to sustain substantial gainful employment. Deference was given to the evaluation and opinions of the Claimant's primary care treating doctor in reaching this determination. In doing so, it is found that the combination of the Claimant's physical impairments and mental impairments have a major impact on her ability to perform and sustain performance of 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.

The State Disability Assistance 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.

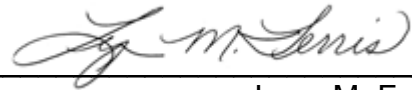
In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, she is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P.

Accordingly, It is ORDERED:

1. The Department is ordered to initiate processing of the Claimant's MA-P, Retro MA-P and SDA application dated June 29, 2012 and retro application (March 2012) and award required benefits, provided Claimant meets all non-medical eligibility requirements.
2. The Department shall issue a Supplement to the Claimant for SDA benefits the Claimant is otherwise entitled to receive, if any, in accordance with Department policy.
3. The Department shall initiate review of the Claimant's disability case in August 2014 in accordance with Department policy.



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

Date Signed: August 30, 2013

Date Mailed: August 30, 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.

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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]
[REDACTED]