

**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 23565
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 12, 2013
County: Oakland County 04

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 June 12, 2013, from Pontiac, Michigan. Participants on behalf of Claimant included the Claimant and ██████████ of ██████████, the Claimant's Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included ██████████, Eligibility Specialist.

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 7, 2012, Claimant applied for MA-P and retro MA-P to August 2012.
2. On November 13, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent a Notice of Case Action dated November 13, 2012 to the Claimant denying the Claimant's MA-P application. Exhibit 1
4. On January 11, 2013, the Claimant's Authorized Hearing Representative submitted to the Department a timely hearing request.

5. On March 21, 2013, the SHRT found the Claimant not disabled and denied Claimant's request.
6. At the hearing,, it was determined that the medical evidence was deemed insufficient and the Department was ordered to schedule a consultative examination and additional hospital admission records were requested and a DHS 49 D and E were requested to be completed by the Claimant's treating doctor. An Interim Order was issued on June 17, 2013. None of the evidence as ordered was received. Thus, there was no required new additional evidence to be submitted to the State Hearing Review Team.
7. At the time of the hearing Claimant was 58 with a [REDACTED] birth date.
8. The Claimant graduated from high school and has one year of college.
9. Claimant has employment experience as a quality control worker sorting and counting parts. The Claimant was also worked for a property management company doing bookkeeping and leasing. The Claimant also did general clerical work.
10. Claimant alleges physical impairments due to small bowel obstruction, adhesions due to multiple bowel and abdominal surgeries, Irritable Bowel Syndrome, Barrets esophgitis pre-cancerous, in remission, diverticulitis.
11. The Claimant has alleged mental impairment due to depression and anxiety.
12. Claimant's limitations have lasted for 12 months 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).

Here, Claimant has satisfied requirements as set forth in steps one and two of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed.

Claimant alleges physical impairments due to small bowel obstruction, adhesions due to multiple bowel and abdominal surgeries, Irritable Bowel Syndrome, Barrets esophgitis pre-cancerous, in remission, diverticulitis.

The Claimant has alleged mental impairment due to depression and anxiety. A summary of the medical evidence follows.

On September 13, 2012 The Claimant was admitted for a one day stay with a diagnosis of irritable bowel syndrome. The Claimant has a history of IBS, ileus and constipation. Prior to this admission Claimant was seen previously 3 weeks prior with same symptoms. The Claimant had pain and cramping left side. The Claimant was discharged home the next day with a more aggressive bowel program of sorbitol daily to keep her stools loose. An abdominal series showed no obstruction. The exam notes indicate that this episode is likely represents a recurrent partial obstruction secondary to adhesions.

The Claimant was admitted to the hospital on August 25, 2012 complaining of abdominal pain and past medical history of significant IBS with multiple surgeries for hernia repair, hysterectomy, partial small bowel obstruction and adhesiolysis. At the time of admit Claimant could not tolerate food. The Claimant did have an ileus pattern on the x-ray. The discharge 4 days later noted abdominal pain. There were no signs of bowel obstruction and abdominal pain resolved with treatment.

The claimant presented to the hospital on August 11, 2012 with chronic right knee pain with weight transfer. Her treating doctor advised her she needs a patellar replacement. The physical examination noted right knee tenderness. The impression and plan was arthritis, degenerative joint disease and internal derangement of knee. The Claimant was discharged.

On August 19, 2012, the Claimant was seen in the emergency room without admission with abdominal pain. Bowel sounds were present in all 4 quadrants and high pitched to left upper quadrant. X-rays of bowel were negative. Final diagnosis was acute abdominal pain possible adhesions.

On August 7, 2012 the Claimant was seen in the emergency room and admitted for a one day stay with a diagnosis of abdominal pain and enterocolitis no bowel obstruction found on x-ray.

On July 19, 2012 and July 23, 2012, the Claimant was seen in the emergency room for left upper quadrant abdominal pain. The Claimant was given pain medication and discharged.

On July 4, 2012, the Claimant was seen in the emergency room due to being unable to tolerate solid food for 3 weeks and abdominal pain. The Discharge diagnosis was anxiety, acute abdominal pain and constipation.

The Claimant was seen in the emergency room with abdominal pain on July 8 and July 9, 2012. She was given enemas and discharged stable and to follow up with her doctor.

The Claimant was seen in the emergency room on March 201, 2012 and February 28, 2012 and January 30-31, January 28, 2012 and January 27, 2012 with chronic and acute abdominal pain. A CT was ordered of the abdomen. The impression was no acute abdominal or pelvic process, status post hernia repair, hysterectomy, cholecystectomy and appendectomy.

No medical evidence was provided regarding the Claimant's alleged mental impairments other than with her numerous hospitalizations noted above which referenced in the diagnosis anxiety and administering Xanax. The Claimant was requested to submit medical reports from her treating mental health provider but no records were received.

Based on this review of the medical evidence provided it is determined that the Claimant has satisfied the severity requirements of Step 2 of the analysis.

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 5.06, Inflammatory Bowel Disease and Listing 5.07 Short Bowel Syndrome were examined and it is determined that the listing was not met.

Listing 5.06 requirements require a severity that was not demonstrated by the medical evidence. The Listing provides: Inflammatory bowel disease (IBD) documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with: **A.** Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period.

Listing 5.07 Short Bowel Syndrome requires; due to surgical resection of more than one-half of the small intestine, with dependence on daily parenteral nutrition via a central venous catheter (see 5.00F). Again the listing was not met or demonstrated by the medical evidence.

At the hearing, the Claimant credibly testified to the following symptoms, abilities and capabilities. The Claimant could stand for 10 minutes and then experienced fatigue, and could sit for an hour. The Claimant could walk two blocks and could not bend at the waist without pain from side to side. The Claimant has chronic pain in the abdominal area due to IBS. The Claimant also has cramps and spasms and nausea due to her abdominal pains. The Claimant stays home most of the time The Claimant

can carry 8 pounds. It is also noted by the undersigned that the Claimant did appear in a weakened state. The claimant has difficulty sleeping and is on a liquid diet much of the time. The Claimant at the time of the hearing had lost 15 pounds.

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 has employment experience as a quality control worker, sorting and counting parts. The Claimant was also worked for a property management company doing bookkeeping and leasing. The Claimant also did general clerical work. The Claimant was on her feet much of the day in these jobs. The Claimant also credibly testified to losing jobs due to her health problems and missing work due to her IBS. The Claimant had to leave her last job managing property as the stress level caused her IBS symptoms to increase.

This Administrative Law Judge finds, based on the medical evidence and objective, physical findings, and the Claimant's credible testimony with regards to his current physical abilities, 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 58 years old and, thus, considered to be of advanced age for MA-P purposes. The Claimant has the equivalent of a high school education. Her past employment was semi-skilled but is not transferable. Also none of her past work as described by the Claimant was strictly sedentary, most of the work required some up and down, walking, standing and carrying of objects, parts, and files. 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).

At the hearing, the evidence of record was deemed insufficient and an order was issued for the Department and the Claimant to obtain additional medical evidence which was not done. The Department has failed to comply with the order to provide the results of the consultative exam. Therefore, any ambiguity found in the record shall be considered in a manner that benefits rather than harms Claimant's case.

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). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

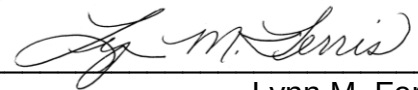
After a review of the entire record, including the Claimant's credible testimony, Claimant's educational background and medical evidence which supports multiple emergency room visits due to chronic abdominal pain, it is determined that Claimant's impairments have a major effect on her ability to perform basic work activities. 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 sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.06, 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 decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated June 7, 2012, and the Claimant's retro application (August 2012) if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for April 2015.



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

Date Signed: April 8, 2014

Date Mailed: April 9, 2014

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/tm

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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