

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-32138
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: July 17, 2013
County: Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on July 17, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and her witness, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

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 October 10, 2012, Claimant applied for MA-P, SDA and retro MA-P to July 2012.
2. On January 31, 2013, the Medical Review Team denied Claimant's request.
3. On February 27, 2013, Claimant submitted to the Department a request for hearing.
4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 42 years old.

6. Claimant completed education through a GED. She obtained certification as a nursing assistant and medical assistant.
7. Claimant has employment experience (last worked 2004) as a nurse's aide in a nursing home (required standing/walking the entire 8 hours, no sitting, required bending, stooping and squatting and required lifting over 150 lbs), worked in the cash office at [REDACTED] (required standing/walking less than 2 hours, sitting 6 or more hours, required bending, stooping and squatting and required lifting over 50 lbs) and secretarial work (required standing/walking less than 2 hours, sitting 6 or more hours, required bending, stooping and squatting and required lifting less than 10 lbs).
8. Claimant suffers from herniated disc, degenerative arthritis, pancreatitis and depression.
9. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
10. Claimant has some limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

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).

The SDA program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. 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 herniated disc, degenerative arthritis, pancreatitis and depression. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. On [REDACTED], Claimant was admitted for a drug overdose. Claimant was discharged on [REDACTED]. Claimant's admitting GAF was 20 and her GAF at discharge was 50-55. Claimant's discharge diagnosis included drug overdose, tachycardia likely secondary to dehydration and possible overdose, severe depression/anxiety, suicide ideation, chronic pancreatitis - stable, asthma, diabetes, hypertension, hypothyroidism. In an office visit on [REDACTED], her abdominal examination was found to be unremarkable, normal range of motion and stability in all extremities with no pain on inspection, no sensory loss, deep tendon reflexes were preserved and symmetrical and noted to have a skin rash with 4-5 lesions on her mid back. A [REDACTED], medication review indicated the Claimant had not complied with medical advice to adjust her medications. No impairment of thought was noted. Her sleep was noted to be fragmented and underlying anxiety. Diagnosis was major depressive disorder.

Claimant testified to the following symptoms and abilities: not able to lift over 5 lbs, not able to sweep or vacuum, any arm movement impacts her neck, not able to manage any yard work, if she attempts housework, she is down for days following, pains and muscle spasms, dizzy spells, mood swings daily, crying spells occurring daily, not able to be around large groups of people, not able to walk her dogs, not able to look down at a book for more than half an hour or she experiences dizzy spells, she has issues with loss of balance causing her to fall, uses a cart when grocery shopping, not able to use stairs, doesn't leave her home so she is unable to say how far she can walk, can stand an hour and one-half on average but at most two hours, not able to sit in one spot too long due to pain, she can sit two hours, struggles with opening jars, she drops things due to her hands going numb, she avoids bending due to the muscle spasms and pain, feels pressure going into her head, manages going to the bathroom by herself, needs help at times showering due to limited ability to reach, no delusions, some issues at times with paranoid thoughts that her ex-husband could hurt her, was in the hospital a year ago for suicidal thoughts and suicidal thoughts occurring weekly to monthly.

Claimant's ex-husband testified that Claimant is only able to sit 20 minutes, when she attempts to do anything she is down 2-3 days, has issues with passing out and falling down and when she is on her medications she sleeps 15 hours or more a day.

The degree and severity of restrictions and symptoms the Claimant testified to suffering are not supported by the objective medical evidence submitted for consideration. Claimant is reporting a far greater degree of symptoms and restrictions on her daily living than the records support.

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 last worked in 2004 as a nurse's aide in a nursing home. This position required Claimant to stand/walk the entire 8 hours with no sitting and required bending, stooping and squatting. This position required lifting over 150 lbs. Claimant also worked in the cash office at [REDACTED]. She testified she was required stand/walk less than 2 hours and sit 6 or more hours. She was required to be capable of bending, stooping and squatting along with lifting over 50 lbs. Claimant also performed work as a secretary. This position required standing/walking less than 2 hours, sitting 6 or more hours and required bending, stopping and squatting. She was required to lift less than 10 lbs. Claimant's impairments fail to prevent her from being able to perform the duties necessary for past employment as a secretary. This Administrative Law Judge finds, based on the medical evidence and objective, physical and psychological findings, that Claimant is capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

Therefore, Claimant is not disabled for purposes of the MA and SDA programs as she is still capable of past employment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHeld.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 29, 2013

Date Mailed: July 29, 2013

NOTICE: 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 was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that affect the substantial rights of the claimant,
 - failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JWO/pf

cc:

