

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013 32976
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 12, 2013
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in-person hearing was held on June 12, 2013 from Pontiac, Michigan. Participants on behalf of Claimant included the Claimant and ██████████
██████████ the Claimant's Authorized Hearing Representative (AHR). Participants on behalf of the Department of Human Services (Department) included ██████████
ES.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On June 7, 2011, Claimant applied for MA-P.
2. On November 20, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated December 10, 2012 denying the Claimant's MA-P application. Exhibit 1

4. On February 25, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On May 7, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED] [REDACTED] Claimant height was 5'7" and weighed 119 pounds.
7. Claimant completed high school and 3 years of college courses.
8. Claimant has employment experience working as light duty assistant for a senior citizen complex, with duties such as driving residents to appointments. The Claimant also worked in a car wash as a line attendant. Claimant has also performed temp work last working in a foundry. The Claimant also previously worked in a factory assembling and testing panels.
9. Claimant alleges physical disabling impairments due to two strokes (acute ischemia (cerebral)) with fatigue, dizziness, headaches and loss of appetite and with some speech repetition. The Claimant also has a sickle cell trait by heredity.
10. Claimant has not alleged any mental disabling impairments.

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 two strokes (acute ischemia, (cerebral) with fatigue, dizziness, headaches and loss of appetite and with some speech repetition. The Claimant also has a sickle cell trait by heredity. Claimant has not alleged any mental disabling impairments.

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

A physical examination was performed on [REDACTED] by a consultative doctor. The exam noted hyperlipidemia, The examiner noted generally tired with low energy level and insomnia. Neurologic, noted weakness and positive changes in mentation. General appearance was rated normotensive, in no acute distress, well appearing. Speech is interrupted, not clear, repeats herself, no localizing findings no tremor, decreased remote and recent memory. Patient feels depressed with anxiety, no suicidal or paranoid thoughts, refused using antidepressants. Patient should have holter monitor for frequent dizziness and palpitations. Diagnosis was mixed

hyperlipidemia, adjustment disorder with mixed anxiety and depressed mood, unspecified deficiency anemia, sickle cell trait, transient ischemic attack, and cerebral infarction without residual deficits. Fall prevention advised to improve home environment to reduce fall risk, removal throw rugs, and obstruction in walkways, and grab bars in bathroom. Limit smoking and advised to quit smoking with referral to smoking cessation.

The Claimant was admitted to the hospital on [REDACTED] for a 3 day hospital stay. The Final Report noted that Claimant presented with left side sensation deficits with her face and mild weakness of the arm. MRI and MRA perform, MRI revealed an 8mm focus of acute ischemia in the inferior left cerebral atmosphere as well as a smaller linear area of acute ischemia lightly more superior to it as well as multiple small remoter infarcts with the left cerebral hemisphere and right cerebellar hemisphere. Also evidence of elimination of the left occipital lobe suggestive of prior ischemic change. The MRA revealed a possible mild narrowing of the cisternal segment of left cerebral artery with no occlusion of large aneurysm seen. A 2-D echo was performed showing no abnormalities in valves, and mildly reduced systolic function with ejection fraction of 40% to 45%. A TEE revealed no thrombus and ejection fraction of 55%. EEG performed which was within normal limits and carotid Doppler with no carotid disease.

The hypercoagulable workup for sickle cell trait had been negative. Vasculitis was also reviewed as well as rheumatoid factor, sed rate and hepatitis all negative. Claimant was advised to continue outpatient psychotherapy. Claimant was stable throughout her stay and was discharged in stable condition and advised to see her primary care physician. The records indicate the Claimant may not have been compliant with her medications. A psychiatric workup noted Claimant's mood depressed, diagnosis depression secondary to medical condition, not incapacitating nor significantly distressing at that time. GAF score was 50.

The Claimant was also admitted to the hospital for several days on [REDACTED] and presented with speech difficulty and right sided weakness. Imaging and Laboratory reports at time of discharge included 2-D echocardiogram, with no evidence of vegetations or thrombus. Normal left ventricular systolic function with an ejection fraction of about 60% to 65%. Carotid Doppler showed evidence of minimal irregular heterogenous block in the blub and proximal internal carotid artery which produced less than 40% *stenosis* on both sides. Final diagnoses were acute ischemic low density lesion in the left cerebral hemisphere, low density changes in the periventricular white matter and anterior horn of the left cerebral hemisphere. The Claimant was discharged to home to obtain a holter monitor. The rehabilitation consult noted that unless the patient declines from a functional standpoint she is going to do very well.

A Consultative Psychological Exam was conducted on [REDACTED] The exam noted at that time that the Claimant advised the examiner that she had no problems with daily functioning and is capable of cleaning, cooking and performing all household tasks. The Impression was that the Claimant was depressed because of her limitations following her strokes. She has lost some cognitive functions, she meets the criteria for

a mood disorder due to her medical problems. The GAF score was 50. The Recommendations were as follows: Ms. Benson is believed to have the mental ability to relate to others, including fellow workers, supervisors and general public in a work-related environment. Claimant has ability to have the mental ability to understand remember and carry out simple tasks but is unable to engage in multi-tasking. Claimant has ability to maintain her attention concentration, persistence and pace when performing routine, well-learned tasks is moderately impaired. Claimant's ability to withstand the stress and pressures associated with day-to-day work is moderately impaired. Claimant is believed to be capable of independently managing her finances. Prognosis as long as she receives and benefits from the appropriate treatment. This evidence was considered and included, but the Claimant has not alleged mental disabling impairments.

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

In addition, the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. 11.00 Neurological section of the Listings were consulted but based upon the objective medical evidence the Claimant's impairments due not meet the intent or severity of the listing. 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 mixed hyperlipidemia and acute ischemic infarction of the brain with some residual weakness. The Claimant had two hospital admissions in [REDACTED] and [REDACTED] due to cerebral infarction.

Claimant testified to the following symptoms and abilities: the Claimant testified that she could stand an hour possibly up to 2 or 3 and could sit between an hour and 30 minutes. The Claimant could walk 5 blocks and could carry a gallon of milk. Claimant can shower and dress herself, tie her shoes and touch her toes. At the hearing the Claimant's speech was observed at times as slow, but speech was clear and understandable.

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 working as light duty assistant for a senior citizen complex, with duties such as driving residents to appointments. The Claimant also worked in a car wash as a line attendant. Claimant has also performed temp work last working in a foundry. The Claimant also previously worked in a factory assembling and testing panels. In these last two jobs the Claimant was on her feet all day and was required to walk around throughout the day and repeatedly lift/carry objects. The Claimant testified that she did not have the stamina physically to perform the standing and carrying aspects of these jobs.

The Claimant's prior work would be categorized as unskilled light to medium work. Due to the varying weights associated with some of the jobs. It is ultimately determined that Claimant is not capable of the physical activities required to perform any such position and cannot perform past relevant work. Also considered in this regard was the finding, although a year old, that the Claimant should wear a holter monitor for dizziness and fall prevention steps were also noted for in the home. 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, thus, considered to be a younger individual for MA-P purposes. The Claimant has a high school education and 3 years of college. 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).

After a review of the entire record, including the Claimant's testimony and medical evidence presented, and in consideration of the Claimant's physical impairments including mixed hyperlipidemia, two strokes (acute ischemia (cerebral)) with fatigue, dizziness, headaches and loss of appetite and with some speech repetition and a sickle cell trait by heredity, it is determined that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis includes the ability to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.27, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

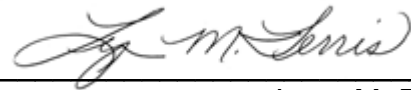
In this case, the Claimant is found not disabled for purposes of the MA-P program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, It is ORDERED:

The Department's determination is hereby AFFIRMED



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

Date Signed: July 3, 2013

Date Mailed: July 3, 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 effect the substantial rights of the claimant:
 - the 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

LMF/cl

CC:

[REDACTED]
[REDACTED]
[REDACTED]
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