

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

**IN THE MATTER OF:**

██████████  
██  
██████████  
██

Reg. No.: 2013 40763  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: August 7, 2013  
County: Wayne (18)

**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 August 7, 2013, from Taylor, Michigan. Participants on behalf of Claimant included the Claimant. ██████████, the Claimant's Authorized Hearing Representative, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████ Medical Contact Worker.

**ISSUE**

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

**FINDINGS OF FACT**

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

1. On September 12, 2012 Claimant applied for MA-P and retro MA-P (August 2012).
2. On January 10, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated January 13, 2013 denying the Claimant's MA-P application. Exhibit 1

4. On March 27, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On June 19, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on August 13, 2013 ordering the Claimant's Authorized Hearing Representative to submit additional medical evidence from the Claimant's primary care physician.
7. December 2, 2013 the State Hearing Review Team denied Claimant's request and found Claimant not disabled.
8. Claimant at the time of the hearing was ■■■ years old with a birth date of ■■■■■■■■■■. The Claimant is now ■■■ years of age. Claimant's height was 5'5" and she weighed 176 pounds. The Claimant has lost 20 pounds within the last six months.
9. Claimant completed the 10<sup>th</sup> grade and has a GED.
10. Claimant's prior work experience is as an optician.
11. The Claimant has alleged mental disabling impairments including anxiety and chronic depression.
12. Claimant alleges physical disabling impairments due to seizures, closed head injury, low back pain, ankle fractures, both ankles, with second left ankle fracture, and uses a cane. The Claimant loses her balance due to her medications, a history of laminectomy at L5-L6, esophageal ring with food impaction, abdominal spasms, and sleep apnea with use of CPAP machine. GERD and MERSA infection in left breast and legionnaire's disease. The Claimant also has had at least two admissions for pneumonia.
13. Claimant's impairments have lasted or are expected to last for 12 months' duration 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).

Claimant alleges physical disabling impairments due to seizures, closed head injury, low back pain, ankle fractures both ankles, with second left ankle fracture, and uses a cane. The Claimant loses her balance due to her medications, a history of laminectomy at L5-L6, esophageal ring with food impaction, abdominal spasms, and sleep apnea with use of CPAP machine, GERD and MERSA infection in left breast and legionnaire's disease. The Claimant also has had at least two admissions for pneumonia.

The Claimant has alleged mental disabling impairments including anxiety and chronic depression

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

The Claimant was admitted for a two day stay on [REDACTED] for suicide attempt due to taking an overdose of medication after becoming homeless when her boyfriend said she could no longer reside with him. At the time of admission Claimant was very depressed. At discharge Claimant was referred to a community mental health center and given anti-depressants. At discharge the Claimant's mood had improved significantly and psychomotor activity improved. Claimant was making rational and realistic plans for future. The Claimant's GAF score at time of discharge was 60 and diagnosis was depressive disorder.

In [REDACTED] the Claimant had an esophagogastroduodenoscopy which biopsied of her esophagus. At the time of the biopsy, severe reflux esophagitis with ulcer was noted. At the time of this admission the diagnosis was GERD, gastritis, chronic pain, and depression.

In [REDACTED] the Claimant was treated for fracture of her of left lateral malleolus, (ankle). [REDACTED] Claimant injured her left ankle when she smashed it in the car door. Ankle was bruised. The Diagnosis was sprain of left ankle with old fracture, and condition improved.

On [REDACTED]013 the Claimant was admitted for a several day hospital stay due to acute respiratory distress, pneumonia left side. The Claimant was treated with antibiotics and discharged.

The Claimant was admitted on [REDACTED] for a 6 day stay for breast cellulitis with staphylococcus aureus. The Claimant was discharged in stable condition after antibiotic treatments.

The Claimant has a history of recurrent food bolus impactions in her esophagus. She has had several procedures to extract food lodged in the esophagus with possible Barrett epithelium with ulceration due to gastroesophageal reflux disease.

A consultative mental status evaluation was conducted on [REDACTED]. At the time of exam the Claimant reported last seizure [REDACTED]. The Claimant denied substance abuse history. The diagnosis was depressive disorder and anxiety disorder with alcohol abuse in remission. GAF score was 55. The examiner found that Claimant's mental ability to relate to others including fellow workers and supervisors is not impaired. Ability to understand, remember and carry out tasks appears to be mildly impaired. It is likely that the Claimant could handle more complex tasks, and difficulty in performing multiple step tasks is likely to be minimal. Ability to maintain attention, concentration, persistence, pace and effort is mildly impaired. Ability to withstand stress and pressure associated with day-to-day work is moderately impaired.

On [REDACTED] the Claimant also received a consultative physical examination. The physical exam noted slight tenderness at L4-L5 with no muscle spasm. There were limitations with range of motion in her back and ankles. The examiner noted the Claimant had a limitation from squatting. The assessment noted that Claimant suffers from seizure activity and takes anti-seizure medication. Claimant has lower back pain, status laminectomy and fusion of L4-L5. She has gastroesophageal reflux disease with esophageal rings and needs regular dilatation. History of left ankle fracture with open reduction and itinerant fixation with no tenderness or swelling with some stiffness. Claimant suffers from depression. Claimant has sleep apnea and uses a CPAP machine. As far as examiner was concerned gait was normal and no sensory or motor deficits in the upper or lower extremities. She was restricted from driving. For lower back pain, physical therapy or further MRI was recommended. For Depression the examiner found Claimant needed a psychiatric consult.

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

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 1.04 Disorders of the Spine, was examined in light of the Claimant's low back pain; Listing 5 Digestive System; Listing 3.00 Respiratory System; however none of the listing requirements were met or supported by the available medical evidence. Listing 11.03 regarding epilepsy, non-convulsive therapy was examined, and was not met as there was no independent description of a typical seizure which was verified by testimony of a person other than the Claimant. As regards mental impairments Listing 12.04 Affective Disorders

(Depression) and 12.06 Anxiety Related Disorders were also examined and were not met. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than 500 feet due to her ankles, she could stand for 10 to 15 minutes, and could sit for 30 minutes but experienced back pain and ankle swelling and pain. The Claimant testified she could not bend at the waist due to her lack of equilibrium and dizziness from seizure medication and her back, and can bend at the knees only, and experiences radiating pain from her back. Claimant testified she could carry 5 pounds. The Claimant had limited range of motion in her back which is supported by the consultative examination finding back pain. While Claimant can do some things around the house, she could not do laundry or vacuum due to her back. Claimant further testified to ongoing pain due to her lower back problems. The Claimant further testified that she could not drive because of her seizure medications and did not grocery shop due to sensitivity to fluorescent lighting. The Claimant's testimony was deemed credible. The Consultative exam found there were limitations with range of motion in her back and ankles. The examiner noted the Claimant had a limitation from squatting and limitations with range of motion in her back. The examiner noted that Claimant should receive either physical therapy or an MRI to resolve her back pain, thus giving credence that her complaints were not frivolous.

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's past employment was working as an optical manager for an optician. Her work required that she stand or be on her feet most of the day, 80% of the time. She performed many diverse functions and her skills are deemed non-transferable. Additionally, the Claimant's ongoing depression and anxiety caused her to be admitted for suicide, and created difficulty in the workplace in her dealings with the public. This prior work requires abilities and capabilities that based on the limitations presented cannot be any longer achieved by the Claimant. Therefore it is determined that the Claimant is no longer capable of past relevant work. 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 ■ years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has an 11<sup>th</sup> grade education and a GED. and has been restricted with limitations on standing and walking less than 2 hours in an 8 hour workday and sitting

less than 6 hours in an 8 hour workday. 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 credible testimony and medical evidence presented, and the objective medical evidence provided by the Claimant, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered and that the Claimant is capable of sedentary work as she cannot meet the required standing or sitting or lifting requirements for light work. In doing so, it is found that the combination of the Claimant's physical impairments in totality and chronic ongoing depression have a major impact on her ability to perform even basic work activities. This Decision was also influenced by the Claimant's ongoing treatment for food impaction procedures and multiple hospital admissions and general overall health condition. The Claimant herself stated at her Mental Status Exam that she wanted to work, however she was a high risk employee as she misses a lot of work.

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 201.10, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

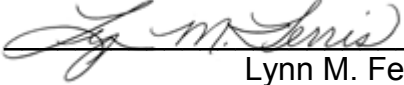
### **DECISION AND ORDER**

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to initiate a review of the application dated September 20, 2012 and retro application for August 2012 if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for January 2015.

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

Date Signed:

Date Mailed:

**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/cl

cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]