

**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 42867
Issue No.: 2009
Case No.: ██████████
Hearing Date: August 14, 2013
County: Wayne (49)

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 14, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ ██████████ also appeared as a witness. ██████████ ██████████ ██████████ 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 August 23, 2012 the Claimant applied for MA-P and retro MA-P June 2012.
2. On January 25, 2013, the Medical Review Team denied Claimant's request.

3. The Department sent the Claimant the Notice of Case Action dated February 4, 2013 denying the Claimant's MA-P application. Exhibit 1
4. On, April 18, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On July 8, 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 22, 2103 ordering the Claimant's AHR to obtain DHS 49s from treating doctors. New medical evidence was also received at the hearing. The new medical evidence was submitted to the SHRT on December 9, 2013.
7. On February 10, 2014 the State Hearing Review Team denied Claimant's request and found Claimant not disabled.
8. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED]. The Claimant is now [REDACTED] of age. Claimant's height was 5'1" and weighed 176 pounds. The Claimant has gained 20 pounds within the last six months.
9. Claimant completed the 11th grade and indicated that she could only perform addition and had difficulty with reading.
10. Claimant's prior work experience was working on car parts for an automotive concern and a stocking and cashiering job at [REDACTED]. The Claimant also did janitorial work for the airport.
11. The Claimant did not allege any mental disabling impairments in her application.
12. Claimant alleges physical disabling impairments due to a mass in her abdomen, foot drop, fibromyalgia, diabetes with foot ulceration, neuropathy due to diabetes, hysterectomy due to multiple fibroid masses, retinopathy and cataracts, hypertension, incontinence due to urethra damage secondary to hysterectomy, decreased grip strength in her hands and general pain in arms, legs, feet and knees.
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 a mass in her abdomen, foot drop, fibromyalgia, diabetes with foot ulceration, neuropathy due to diabetes, hysterectomy due to multiple fibroid masses, retinopathy and cataracts, hypertension, incontinence due to urethra damage secondary to hysterectomy, decreased grip strength in her hands and general pain in arms, legs, feet and knees.

The Claimant has not alleged any mental disabling impairment.

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

A Medical Examination Report was completed by the Claimant's treating doctor on [REDACTED]. The diagnosis was depression, diabetes, hypertension, and lower extremity pain with numbness. The doctor has been treating the Claimant since [REDACTED]. The Claimant's medical conditions were rated as stable. The doctor imposed the following limitations. The Claimant could lift frequently less than ten pounds and occasionally up to 20 pounds. The Claimant could stand/walk at least 2 hours out of an 8 hour work day.

A Medical Examination Report was also completed by Claimant's doctor, an endocrinologist who has treated her since [REDACTED]. The diagnosis was Type 2 diabetes, hyperlipidemia and hypertension. At the time of the exam, [REDACTED], the Claimant had a disability imposed that was expected to last more than 90 days. The following limitations were imposed. The Claimant could occasionally lift 10 pounds and never more than 20 pounds and beyond. The Claimant could stand or walk only 2 hours in an 8 hour work day. The Claimant could sit less than 6 hours in an 8 hour work day. The Claimant was further restricted from pushing or pulling with either hand. The doctor also found Claimant unable to meet her needs in the home.

The Claimant was seen on [REDACTED] at [REDACTED] by referral from her treating doctor for pain. The Claimant reported pain in her arms, legs and back. The examination noted that straight leg raise was negative bilaterally and that left

leg had noted weakness with weakening of eversion 4/5 with numbness and tingling in left lower extremity, none on right. Bilateral knee reflexes not elicited. At this meeting several options were discussed and nerve root block was the consideration subject to medical records being obtained. Pain medications were increased.

In [REDACTED] the Claimant underwent a CT of abdomen. The CT noted stable right renal cyst, left adrenal mass appearing stable in size and appearance. Calcified left upper abdominal mass is again seen and measures 4.9 x 6.0 x 4.0 cm. Examiner recommended follow up MRI for adrenal lesion. The abdominal mass showed increased dystrophic calcification. Clinical correlation is recommended.

A CT of the lumbar spine was performed on [REDACTED] which noted unremarkable lumbar spine exam and calcified mass on left lower quadrant as shown on prior CT scan. Biology uncertain.

The Claimant was seen on [REDACTED] in the ER for chest pain. At that time, the Claimant was seen and observed and tests were conducted and placed in telemetry. At the time of testing the Claimant had an ejection fraction of 65% in the range of 60-65% Normal LV ejection fraction. The ECG noted no evidence of myocardial ischemia. The Claimant was discharged home.

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 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 1.02 Major Dysfunction of a Joint(s) due to any cause), was examined in light of the Claimant's foot drop and use of a cane and diabetic neuropathy; however, the listing was not met based upon the evidence available and the Claimant was still able to ambulate. Also examined was Listing 11.14, Peripheral Neuropathies with disorganization of motor functions which also was 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 cannot do her laundry because she has a problem climbing stairs and she is unable to carry the laundry up and down stairs. The Claimant also does not cook because her hand weakness causes her to drop things. Claimant could not walk more than 100 feet without resting due to foot pain and fatigue. She could stand for 10 minutes due to pain and needed to use a cane when standing. The Claimant could sit for 30 to 45 minutes. The Claimant testified she could not bend at the waist with use of her cane and could not bend forward. The Claimant uses a shower chair and requires assistance dressing. The heaviest weight the Claimant could carry was 5 pounds. The Claimant could not squat or touch her toes and uses a motorized cart when grocery

shopping. The Claimant's testimony was deemed credible. The Claimant's treating neurologist and primary care doctors both determined that Claimant had limitations and imposed limitations on sitting and standing as well as walking and one of her doctors found she could not meet her needs in the home.

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 consisted of jobs working on car parts for an automotive concern and a stocking and cashiering job at [REDACTED]. The Claimant also did janitorial work for the airport. The Claimant last worked in 2006.

In the automotive job she had to lift parts weighing 30 pounds and was on her feet all day. In the [REDACTED] job she was on her feet most of the day and when stocking shelves she lifted 20 pounds. The airport cleaning job also required standing most of the time. The Claimant's work was unskilled and therefore transferability is not an issue. 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 50 years old and at application she was ■ years old and was three months away from turning ■ years of age and thus is considered a person approaching advanced age for MA-P purposes. The Claimant has an 11th grade education and credibly testified that she had reading difficulty and could only do addition. As the Claimant is so close to the next age category, the guidance in the SSA regulations provides the following:

When we make a finding about your ability to do other work under § [416.920\(f\)\(1\)](#), we will use the age categories in paragraphs (c) through (e) of this section. We will use each of the age categories that applies to you during the period for which we must determine if you are disabled. We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age

category after evaluating the overall impact of all the factors of your case.

As the Claimant was within three months of the next age category the category closely approaching advance age () was used in light of the above guidance for SSA.

The Claimant's treating doctors have also restricted Claimant's activities and have imposed limitations on standing and walking less than 2 hours in an 8 hour work day and sitting less than 6 hours in an 8 hour work day and lifting of occasionally 10 pounds and frequently less than 10 pounds. Deference was given to the findings and opinions of the Claimant's treating doctors. 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 objective medical evidence presented, particularly the Claimant's two treating doctors' impressions and imposition of limitations, 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 have a major impact 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 201.09, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

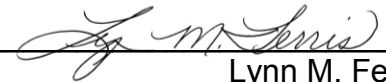
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled.

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 August 23, 2012 and retro application (June 2012), if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for March 2015.



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

Date Signed: March 7, 2014

Date Mailed: March 7, 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

2013-42867/LMF

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]
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