

4. On April 26, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On July 17, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on October 4, 2013 ordering the Department to obtain a consultative examination to determine mental status.
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 ■ years old with a birth date of ■■■■■■■■■■. The Claimant is now ■ years of age. Claimant's height was 5 '3" and weighed 230 pounds. At the time of the hearing the Claimant's BMI was 40.5.
9. Claimant has a high school education and one year of college in accounting.
10. Claimant's prior work experience was as the retail store manager of a clothing store, a sales associate at a retail store ringing sales at the register, a car salesman and manager of a PX for the US Department of Defense.
11. The Claimant has alleged mental disabling impairments including severe depression.
12. Claimant alleges physical disabling impairments due to diabetes, peripheral neuropathy associated with diabetes in her feet, and right 5th toe amputation due to foot ulcer, and hypertension, with Body Mass Index of 40.5.
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).

The Claimant has alleged mental disabling impairments including major depression, and diagnosis of Major Depressive Disorder, recurrent, Severe with Melancholic Features and Cognitive Disorder.

The Claimant has alleged physical disabling impairments including diabetes and diabetic neuropathy in both feet with history of diabetic foot ulcer and amputation of right 5th toe and hypertension, with Body Mass Index of 40.5.

On [REDACTED] consultative mental status examination was completed. The diagnosis was Major Depressive Disorder, Recurrent, Severe with Melancholic Features and Cognitive Disorder. The GAF score was 45. The examiner found the affect was constricted, thought was logical, coherent and goal directed with some inability to find the word to use. No evidence of obsessive worry or of compulsive behavior. Denies thoughts of self harm or others. Some impairment in memory and cognition. A Mental Residual Functional Capacity Assessment was also performed. The Claimant was markedly limited in, Understanding and Memory: ability to understand and remember detailed instructions; Sustained Concentration and Persistence: ability to carry detailed instructions, and ability to maintain attention and concentration for extended period, ability to work in coordination with or proximity to others without being distracted by them, the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without unreasonable number and length of rest periods; Social Interaction: ability to accept instructions and respond appropriately to criticism from supervisors, ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes;; Adaptation: ability to respond appropriately to change in the work setting, ability to travel in unfamiliar places or use public transportation and ability to set realistic goals or make plans independently of others. The report noted that the Claimant was off work in 2002 for one year due to nervous breakdown at which time Claimant received inpatient treatment.

A DHS 49 was completed on [REDACTED] by the orthopedic surgeon who performed the amputation of Claimant's right 5th toe due to diabetic ulcer. The evaluation is a bit confusing in that it indicates that limitations imposed on standing and sitting were to "start after next office visit." The exam findings indicated the Claimant could sit less than 6 hours in an 8 hour work day. The doctor also found that the Claimant could stand and/or walk 6 hours in an 8 hour work day. The doctor noted that Claimant required extra depth shoes and orthotics. No assistive devices were necessary. The Claimant could lift less than 10 pounds occasionally. No limitations were imposed with regards to use of hands or arms. The Claimant was noted as stable. The temporary disability date/expected return to work was [REDACTED]. The diagnosis was diabetes and edema with history of osteomyelitis and noted peripheral neuropathy.

On [REDACTED] the Claimant was examined by her family practice doctor whom she had seen for six months. The Diagnosis was diabetes mellitus, hypertension, history of diabetic abscess right foot with amputation and neuropathy associated with diabetes. At the time of the exam the Claimant was ambulating with a walker with front right foot casted and decreased sensation in right hand and feet. A note was made that Claimant displayed a depressed mood. The Clinical impression was that the Claimant was improving and temporary disability would be reassessed at follow-up appointment. But also noted that the limitation could potentially last more than 90 days. At the time of this exam the Claimant was restricted to lifting occasionally 10 to 20 pounds with the note that the assessment limitations were limited to current time. The Claimant could sit about six hours in an 8 hour work day. No assessment of walking, standing was made at the time of the exam. The report noted that Claimant could not operate foot controls with either foot. The Claimant had no restrictions with the use of both of her hands and arms. The medical findings supporting the limitations were decreased sensation in both feet. At the time of the exam the Claimant's right foot was in a cast.

The Claimant was admitted to the hospital for an 11 day stay on [REDACTED] and underwent amputation of her right 5th toe due to right foot ulcer.

At the time of an exam on [REDACTED] the Claimant had reportedly not taken any medications or checked her sugar in many months. She presented with a skin ulcer on right forefoot.

The Claimant was seen for follow up on [REDACTED] at which time she was seen for wound check, no pain in right foot, no trouble with daily activities in regards to her right foot, no trouble sleeping or with her cast. The exam was 88 days post-debridement of neuropathic ulcer involving the dorsal aspect of the right foot with osteomyelitis of the fifth toe and partial ostectomy of the right 5th metatarsal. Cast was removed at that time. X-ray of foot showed satisfactory resection, no evidence of osteomyelitis. The exam notes Diabetes, Polyneuropathy and atherosclerosis of native arteries.

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 meet a listing as set forth in Appendix 1, 20 CFR 416.926.

As regards mental impairments, Listing 12.04 Affective Disorders (Depression) was reviewed. The Claimant was examined on [REDACTED] a consultative examiner with a Diagnosis of severe Major Depressive Disorder, Recurrent and Severe with Melancholic Features and Cognitive Disorder. A Mental Residual Functional Capacity Examination was also completed. The Claimant was markedly limited in all four areas of the exam as set out above in detail, and with demonstrated impairment of

memory and cognition also noted. The GAF score was assessed at 45 which indicates serious symptoms or any serious impairment in social, occupational or school function. During the hearing it was noted that the Claimant presented with lapses of concentration and credibly testified to problems with memory and forgets things, slow concentration and isolation from others. The Claimant testified that she cries easily and daily and suffers sleep disturbance. Although the Claimant has attempted to work part-time she finds her work is affected by her depression and pain in her feet. In light of the objective medical evidence, it is determined that the Claimant meets listing 12.04 A and B and therefore is deemed disabled at Step 3 with no further analysis necessary.

It is also noted based that although the Claimant has been determined disabled at Step 3, based upon the objective medical evidence it would have been determined that Claimant would not be able to perform past relevant work as the Claimant cannot be on her feet all day due to neuropathy in both feet, and limitations imposed at the time she was last examined. All of the Claimant's past relevant work required her to be on her feet most of the day while performing sales work. Based upon the medical evidence presented it is determined that the Claimant would not be able to return to past relevant work and thus would have been deemed not disqualified at Step 4.

Likewise given the Claimant's age, [REDACTED] which places her in the category of a person of Advanced Age with a high school education, with year of college, and past work skills where she performed light work, and which skills are deemed not transferable, it is determined that the Claimant would be disabled at Step 5 as well. Given Claimant's current limitations, both physical and mental, based upon the objective medical evidence and Body Mass Index of 40.5 it would be determined that the Claimant would be capable of sedentary work and thus would have also been deemed disabled at Step 5 as well using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.04.

DECISION AND ORDER

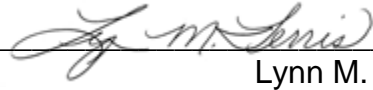
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

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 March 6, 2013 and retro application for February 2013 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 14, 2014

Date Mailed: March 14, 2014

NOTICE OF APPEAL: The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

cc:

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