

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

IN THE MATTER OF:



Reg. No.: 201254076
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: August 6, 2013
County: Wayne (55)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 6, 2012 by teleconference in Detroit, Michigan.

ISSUE

Was the denial of claimant's application for MA-P, SDA, and retroactive-MA-P for lack of disability correct?

FINDINGS OF FACT

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

- (1) Claimant applied for MA-P, SDA, and retroactive MA-P on February 29, 2012.
- (2) Claimant is [REDACTED] years old, and was [REDACTED] years old at the time of application.
- (3) Claimant has a limited education.
- (4) Claimant is not currently working.
- (5) Claimant has a relevant prior work history consisting of store greeter, ticket seller and machine operator.

- (6) These jobs were performed at the light exertional levels, and required lifting at least 20 pounds.
- (7) Claimant has a history of depression, COPD, arthritis, and back pain.
- (8) Emergency room admission records show several admissions in 2011 and 2012 for asthma exacerbations.
- (9) Symptoms included shortness of breath, wheezing, and increased sensitivity to temperature changes.
- (10) Claimant was treated successfully with all admissions and was released without the need for extended stays.
- (11) Independent examinations show clear lungs with no shortness of breath, coughing, or wheezing.
- (12) No treating source documents show limitations with regard to arthritis and back pain.
- (13) Independent examinations note a full range of spinal motion, no joint tenderness, negative straight leg raises, full range of motion in the upper and lower joints, and a steady gait.
- (14) Independent functional capacity assessments state that claimant can lift at least 15 pounds of weight with no difficulty, and gave a diagnosis of mild COPD.
- (15) Claimant was able to walk to the hearing, a distance of three blocks, without difficulty.
- (16) Psychological assessments conducted in June and August 2012 note improved symptoms of depression, good grooming, intact judgment, logical thought processes, with good contact with reality.
- (17) Claimant had a blunt affect, but was coherent and relevant, fully oriented, and had fair insight.
- (18) Claimant was given a GAF 60.
- (19) Claimant has no documented need for an ambulatory aid, nor has one been prescribed.
- (20) Claimant can do most activities of daily living and lives by herself.

- (21) On April 30, 2012, the Medical Review Team denied MA-P and SDA, stating that claimant could perform other work.
- (22) On May 11, 2012, claimant was sent a notice of case action.
- (23) On May 18, 2012 claimant filed for hearing.
- (24) On June 29, 2012, the State Hearing Review Team denied MA-P and SDA, stating that claimant could perform other work.
- (25) On August 6, 2012, a hearing was held before the Administrative Law Judge.
- (26) The record was held open for additional medical evidence; that evidence was returned and the case was forwarded to the State Hearing Review Team for a second determination.
- (27) The State Hearing Review Team denied MA-P and SDA, stating that claimant could perform other work.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program 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 of Human Services (DHS or Department) administers the MA program 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 (BRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or Department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a). 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical

impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still participating in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2012 is \$1,690. For non-blind individuals, the monthly SGA amount for 2012 is \$1010.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of COPD and depression, according to the great weight of the evidence by both the Department and claimant’s treating sources. The symptoms described by the claimant, and supported by independent medical evidence, support the existence of a condition that would result in an impairment that would limit claimant’s ability to perform basic work activities. Records indicate that the claimant has occasional periods of shortness of breath and wheezing. Claimant has some mild concentration impairments from depression. No evidence exists to support claimant’s allegations of arthritis and back pain. The medical records show that the claimant’s impairment can be expected to last 12 months, given the repeated nature of the impairment. Claimant thus passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant’s impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of “not disabled”; if the claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant’s medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 12.00 (Mental), and 3.00 (Respiratory). Claimant has not provided medical evidence required to find disability at this step. The medical evidence presented does not support a finding of disability at this step, as there is no evidence that claimant has severely marked impairments in concentration, activities of daily living, or social function, or meets the objective spirometry testing levels required of a respiratory listing. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant’s vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual’s residual functional capacity (RFC) precludes

meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) the individual has the functional and vocational capacity to perform other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis— meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category. An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating sources' statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, claimant has documented COPD and depression. Medical reports, supplied by the claimant and Department, indicate that claimant has occasional difficulty breathing, which is exacerbated by temperature changes. Claimant does not require a prescribed device to ambulate. Claimant has no documented limitations in her ability to stand for over two hours. No other physical limitations are noted in the record or through testimony. Claimant alleges concentration difficulties from depression; mild concentration difficulties are supported through independent examination.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment for the purposes of exposure to temperature variations and fumes. Claimant has no limitations in the use of her hands for manipulation. Claimant has no postural limitations (e.g. stooping, bending, and crouching). Claimant has no visual limitations or communicative (hearing, speaking) limitations. Claimant is not restricted from lifting over 10 pounds frequently. Claimant should refrain from tasks that require significant physical exertion. Claimant's PRW includes store greeter, ticket seller and machine operator. These jobs, as typically performed and described by the claimant, require temperature exposure and occasional physical exertion. Therefore, given the functional requirements as stated by claimant (which is consistent with how these jobs are typically performed) for these jobs, and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does not retain the capacity to perform her past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge must determine if the claimant's impairment(s) prevents 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 his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (20 CR 404, Appendix 2 to Sub part P, Section 200-204 et.

seq) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is 50 years old, though 49 at application, with an unskilled work history at the light level. Claimant's exertional impairments likely render claimant at least able to perform work at the light level. Claimant has no lifting restrictions, and was capable of walking at least three blocks, as evidenced by her transportation to the hearing; an independent examination residual functional capacity assessment noted claimant could

lift at least 15 pounds without difficulty and gave no restrictions on standing, which is consistent with light work.

Thus, the Administrative Law Judge finds that claimant does not have restrictions on sitting, and could stand, per the medical record, for 6 hours intermittently over the course of an 8 hour day, which is not inconsistent with light work.

Claimant did not testify to any limitation with the use of her hands.

Claimant should restrict herself from significant physical exertion, which is not inconsistent with light work.

Claimant's limitations are thus consistent with light work, which requires standing and/or walking 6 hours in an 8 hour day, and lifting up to twenty pounds during the course of every day work.

The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45-49, age is a less positive factor than for those who are age 18-44. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h)

Therefore, using a combination of claimant's age, education level (which does not provide for direct entry into skilled work), and unskilled work experience, a finding of not disabled is directed. 20 CFR 404, Subpart P, Appendix 2, Rule 202.10.

As stated above, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone. However, while claimant testified to nonexertional limitations or impairments with relation to pain from her physical conditions, claimant has not stated exactly how any residual pain from her impairment would prevent work based activities.

With regard to claimant's depression there is no indication that this condition would substantially compromise her occupational base, except for some mild impairments in concentration that may provide some slight limitations with regard to skilled work. Independent examinations note only moderate limitations in several work related categories. There are no impairments that would substantially prevent unskilled work. Claimant has been given a GAF of 60, which is consistent with some mild limitations in mental functioning, but is usually not of the type that would severely compromise a sedentary occupational base. Thus, claimant has not alleged any mental limitations that are consistent with the medical record that would prevent light employment. Claimant's own treating sources note improved symptoms, fair insight, intact judgment and logical thought processes, which are easily consistent with light work.

As such, the undersigned holds that claimant retains the residual functional capacity to perform light work. As claimant retains the capacity to perform light work, a finding of

not disabled is directed by rule. The Department was correct in its assessment and must be upheld.

Eligibility for SDA was also considered in this analysis but ultimately denied under the same rationale, with the exception of duration, for which the 90 day limitation was used instead. BEM 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is not disabled for the purposes of the MA and SDA program. Therefore, the decision to deny claimant's application for MA-P and SDA was correct.

Accordingly, the Department's decision in the above stated matter is, hereby, **AFFIRMED**.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 8/27/2013

Date Mailed: 8/27/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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.

2012-54076/RJC

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

RJC/hw

cc:

