

**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.: 2013-57019
Issue No.: 2009
Case No.: ██████████
Hearing Date: September 18, 2013
County: Macomb (50-12)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 September 18, 2013, from Clinton Township, Michigan. Participants on behalf of Claimant included Claimant ██████████. Claimant's representative, ██████████ from L&S Associates, also appeared. Participants on behalf of the Department of Human Services (Department) included ██████████

The record was extended to allow additional relevant medical evidence to be submitted. Claimant waived timeliness. The additional medical evidence was received and submitted to the State Hearing Review Team (SHRT) for review prior to this decision being issued.

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 December 17, 2012, Claimant applied for MA-P and retro MA-P to September 2012.
2. On April 12, 2013, the Medical Review Team denied Claimant's request.

3. On July 1, 2013, Claimant submitted to the Department a request for hearing.
4. SHRT denied Claimant's request.
5. Claimant is 57 years old.
6. Claimant completed education through a GED.
7. Claimant is currently working part-time in the dietary department preparing food, washing dishes and stocking food (standing/walking 3-4 hours, no sitting and lifting 3 lbs). She works 12 hours per week earning \$9.60 per hour. Her prior work was as a unit secretary in an emergency room (standing/walking 3, sitting 5 hours and lifting 10 lbs) and insurance billing in a doctor's office (standing/walking 3 hours, sitting 5 hours and lifting 10-12 lbs).
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from high blood pressure, arthritis in knees, fingers and left hip, leg pain, acute chronic anemia, depression, lumbar spondylosis, degenerative disc disease and fibromyalgia.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work

experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

Social Security Ruling (SSR) 99-2p; (SSR 99-2p (4/30/99)); restates policy of the Social Security Administration for claims of disability based on Chronic Fatigue Syndrome (CFS). SSR 99-2p: Footnote (3) provides:

There is a considerable overlap of symptoms between CFS and Fibromyalgia Syndrome (FMS), but individuals with CFS who have tender points have a medically determinable impairment. Individuals with impairments that fulfill the American College of Rheumatology criteria for FMS (which includes a minimum number of tender points) may also fulfill the criteria for CFS. However, individuals with CFS who do not have the specified number of tender points to establish, will still be found to have a medically determinable impairment.

The medical record establishes that, in addition to the diagnosis of chronic fibromyalgia for over twelve months, Claimant has facet arthrosis, lumbar spondylosis with multi-level endplate spurring, degenerative disc disease and depression.

Claimant testified to the following symptoms and abilities: right knee locks up, left hip locks up, lower back pain, fingers hurt and poor grip, drops things, depressed, whole body hurts, not able to walk more than 5-6 feet without pain, poor sleep due to pain, can sit 10 minutes, can stand 15 minutes, can comfortably lift 5 lbs, muscle spasms in back and calves of her legs, standing long causes her knee to build up with fluid, fatigued, has had to have transfusions, medications cause constipation, poor concentration,

impacts her ability to focus, not able to bend, stoop or squat, needs help with household chores, able to manage personal care, needs help with grocery shopping, limited driving, uses a cane and crying spells occurring daily.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet listing 1.04 or its equivalent. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of a listing.

Therefore, Claimant is found to be disabled.

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 2012.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated December 17, 2012, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for February 2015.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 16, 2014

Date Mailed: January 16, 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;

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- 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

JWO/pf

cc:

[REDACTED]
[REDACTED]
[REDACTED]
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