

4. On, September 9, 2013, Claimant submitted to the Department a timely hearing request.
5. On November 13, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on February 6, 2013, ordering the Department to schedule a consultative examination(s).
7. August 4, 2014, SHRT denied Claimant's request and found Claimant not disabled.
8. Claimant, at the time of the hearing, was 58 years old with a birth date [REDACTED] [REDACTED]. Claimant is now 59 years of age. Claimant's was 4'9" tall and weighed 215 pounds (BMI 47.3).
9. Claimant completed the 11th grade.
10. Claimant's prior work experience is as a food preparation employee including baking and managing [REDACTED] franchise outlet.
11. Claimant has alleged mental disabling impairments due to depression and anger control problems.
12. Claimant alleges physical disabling impairments due to hyperthyroidism, pain in right foot and heel, osteoarthritis of the right knee, waddling gait, vaginal cyst, COPD, obesity (BMI 47.3), and problems with both hands and fingers.
13. Claimant's impairments have lasted or are expected to last for 12 months duration or more.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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 medical 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 it is 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).

In this case, Claimant has alleged mental disabling impairments due to depression and anger control problems.

Claimant also alleges physical disabling impairments due to hyperthyroidism, pain in right foot and heel, osteoarthritis of the right knee, waddling gait, vaginal cyst, COPD, obesity (BMI 47.3), and problems with both hands and fingers.

The following is a summary of Claimant's medical evidence presented at the hearing as well as new evidence submitted after the hearing.

A Consultative Medical Examination Report was completed [REDACTED]. The examiner noted that Claimant was positive for thyroid problems. At the time of the exam, Claimant's height was 4'9" and weight was 230 pounds. The examiner also noted good hand grip bilaterally, although relatively weak. Claimant's gait was obvious for waddling due to extreme obesity. Claimant was only able to squat 60% due to knee pain. The examiner noted shortness of breath after doing the exam activities. Range of

motion in both knee joints was decreased. Straight leg raising was positive on the right and the left with complaints of knee joint pain. The impression was hypothyroidism, obesity with a BMI of 47, COPD, osteoarthritis in the hands and fingers with decreased hand grip bilaterally; osteoarthritis in the right knee with decreased range of motion of the knee joint with crepitus during flexion and extension; planter fasciitis in the right foot with pain and tenderness upon deep palpation of the plantar aspect of the right far more on the right heel area. Claimant has a history of vaginal cysts since [REDACTED] and complaints of urinary symptoms with burning sensation during urination. The examiner concluded that, based on the examination, Claimant had both physical and functional limitations due to the above impressions. The examiner noted that Claimant was able to sit/stand and could bend and stoop and carry only to 80% due to knee pain. Claimant could open the door and make a fist and could squat and get on and off the kitchen table during examination but only to 60% due to knee pain. It was also noted that Claimant's gate was unstable due to emphysema and obesity.

[REDACTED] Claimant was seen for a Psychiatric Consultative Examination. Claimant presented as cooperative but, throughout the exam, was hostile because of her inability to obtain medical benefits. Claimant vacillated between being very upset and elated. Her mood was serious and downcast, other times guarded, anxious and apprehensive. Claimant reported feeling hopeless and helpless at times. The diagnosis was persistent depressive disorder, dyspnea with mixed features early onset with intermittent major depressive episodes, with current episode moderate. The prognosis was fair. Based on the examination, there were mild limitations noted on her ability to understand, remember or carry out simple instructions. Her ability to perform simple or multi-step tasks at a sustained pace appears to be mildly limited. Her ability to interact appropriately with the general public, accept instructions and respond appropriately to supervisors appears to be moderately limited at this time. There were moderate limitations noted in the individual's ability to maintain socially appropriate behaviors and adhere to required standards in an organized setting.

Claimant has treated consistently once or twice a week with a community mental health organization for several years.

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, Claimant's impairments have been examined in light of the listings and, after a review of the evidence, 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) Disorders of the Spine, was examined in light of the Claimant's knee. However, the listing requirements were not met or supported by the available medical evidence as Claimant was still able to ambulate. Listing 12.04 was also examined in light of Claimant's depression; however, based on the consultative examination, Claimant's limitations were mild to moderate and, therefore, the listing requirements were not met

as none of the limitations were marked. 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 is unable to carry the laundry up and down the stairs. Claimant could not walk more than a short distance due to shortness of breath and pain in right knee and heel. She could stand for only 20 minutes due to pain. Claimant could sit for 25-30 minutes. The heaviest weight that Claimant could carry was a gallon of milk but not far. Claimant could not squat or touch her toes and has difficulty tying her shoes. Claimant's testimony was deemed credible. The consultative examiner found there were limitations and imposed limitations due to knee pain and shortness of breath.

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 prevents the claimant from doing past relevant work. In the present case, Claimant's past employment was as a food preparation employee including baking and managing ██████████ restaurant. Claimant's work was unskilled and transferability is not an issue due to the fact that Claimant has an 11th grade education and her entire experience was in the food preparation business. Both of her jobs required standing more than Claimant is able to perform and lifting and carrying pans and dough preparation which claimant is no longer able to perform due to problems in her hands and fingers. This prior work requires abilities and capabilities that, based on the limitations presented, can no longer be achieved by Claimant. Claimant is limited in her ability to stand and carry items due to her obesity problems, problems due to grip strength in both hands and right knee pain and waddling gait. Additionally, Claimant suffers shortness of breath. Therefore, it is determined that 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, Claimant was 58 years old and, thus, is considered a person of advanced age for MA-P purposes. Claimant has an 11th grade education and has been restricted to 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 for 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 Claimant's credible testimony and medical evidence presented, and the objective medical evidence, particularly the consultative examiner's impression and imposition of limitations, it is determined that the total impact caused by the physical impairments suffered by Claimant must be considered and that Claimant is capable of sedentary work as she cannot meet the required standing, sitting or lifting requirements for light work. In doing so, it is found that the combination of Claimant's physical impairments in totality and her severe obesity and BMI of 47.3 have a major impact on her ability to perform even basic work activities.

In light of the foregoing, it is found that 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 201.02, it is found that Claimant is disabled for purposes of the MA-P program at Step 5.

As Claimant has been found disabled for purposes of MA-P, Claimant is also disabled for purposes of SDA.

DECISION AND ORDER

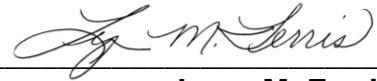
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

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. Initiate a review of the application for MA-P and SDA dated June 18, 2013, and retro application, if any, if not done previously, to determine Claimant's non-medical eligibility; and
2. Issue a supplement to Claimant for any SDA benefits she is deemed otherwise eligible to receive in accordance with Department policy.

3. A review of this case shall be set for September 2015.



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

Date Signed: September 2, 2014

Date Mailed: September 2, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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/pf

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