

**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 17357
Issue No.: 2009
Case No.: ██████████
Hearing Date: April 11, 2013
County: Oakland (04)

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 April 11, 2013, from Pontiac, Michigan. Participants on behalf of Claimant included the Claimant. A witness, ██████████, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████.

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 24, 2012 Claimant applied for MA-P and retro MA-P (July 2012).
2. On November 7, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated November 13, 2012 denying the Claimant's MA-P application. Exhibit 1
4. On November 27, 2012 Claimant submitted to the Department a timely hearing request.

5. On February 7, 2013 the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request.
6. An Interim Order was issued on April 15, 2013 accepting new evidence submitted on the Claimant’s behalf at the hearing and additional evidence to be obtained by the Claimant’s AHR.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on July 2, 2013 and the SHRT denied disability on July 29, 2013
8. Claimant at the time of the hearing was [REDACTED] with a birth date of [REDACTED]. Claimant is now [REDACTED]. Claimant height was 5’5” and weighed 203 pounds.
9. Claimant completed high school.
10. Claimant has employment experience (last worked 2002) performing janitorial work. As such Claimant was required to lift trash containers weighing 45 to 50 pounds and lift a 5 gallon bucket of water to mop floors. The Claimant was on her feet most of the day.
11. Claimant alleges physical disabling impairments due to chronic back and neck pain, diabetes, with neuropathy in feet and hands and hip, carpal tunnel surgery on right hand, radiculopathy with low back pain with positive straight leg raising, and hypertension.
12. Claimant has alleged mental disabling impairments due to anxiety and major depression.
13. Claimant’s impairments have lasted or are expected to last for 12 months’ duration or more.

CONCLUSIONS OF LAW

MA-P 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 administers MA-P 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 (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).

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 alleges physical disabling impairments due to chronic back and neck pain, diabetes, with neuropathy in feet and hands and hip, carpal tunnel surgery on right

hand, radiculopathy with low back pain with positive straight leg raising, and hypertension.

Claimant has alleged mental disabling impairments due to anxiety and major depression.

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

A consultative Medical Examination was conducted on [REDACTED]. The Diagnosis was radiculopathy in lumbar and cervical spine, hypertension, carpal tunnel syndrome in hands and wrists, diabetes mellitus and seizures. The exam notes positive straight leg raising both legs, left worse than the right. The examiner also reviewed x-rays. The following limitations were imposed, frequently carry up to 10 pounds, and Claimant could stand or walk less than 2 hours in an 8-hour work day. The examiner also noted that the Claimant could not push or pull or fine manipulate with either hand. The examiner noted the Claimant could not meet her needs in the home and that her condition was stable. This was a second consultative examination by this examiner. [REDACTED] The exam also noted muscle spasm in neck and lumbar back area with painful range of motion. There was also some painful range of motion in both hips. Based upon x-rays, the claimant has significant degenerative joint disease of both cervical and lumbar spine. The exam notes Claimant requires constant attention from a primary care doctor and noted that a better outcome for the Claimant might be to see a pain management doctor.

A DHS 49 was completed on [REDACTED] by a doctor who had treated the Claimant since 2010. The diagnosis was chronic low back pain, depression, and episodic tendonitis (left greater), bilateral neuropathy due to diabetes both feet. The doctor noted that he saw Claimant only for pain management.

Another consultative exam was performed on [REDACTED]. The examiner concluded that Claimant 'likely' had an element of degenerative disc disease present and complained of pain with straight leg raising. No evidence of nerve root irritation was appreciated. No assistive device necessary. Range of motion was below normal for her cervical spine and lumbar spine. Noted mild difficulty getting on and off exam table and walking on her heels and could not attempt walking on her toes.

The Claimant has also alleged mental disabling impairments due to depression. The Claimant has been treating since [REDACTED] for her depression. An evaluation completed by her psychiatrist notes a GAF score of 45 and a diagnosis Major Depressive Disorder recurrent and severe w/o psychosis.

A consultative psychological evaluation was conducted on [REDACTED]. The Diagnosis was major depressive disorder recurrent severe. GAF was 48. The prognosis was fair. Concentration and memory were impaired. The examiner found the

fund of knowledge was limited and judgment was impacted. The examiner noted that the Claimant's mood may prevent her from success in the workplace.

Here, Claimant has satisfied requirements as set forth in steps one, two, as Claimant is not employed and has demonstrated impairments which 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. Listings 12.04 Affective Disorders (depression) was examined and it is found that there was insufficient medical evidence presented that would support the listing. The Claimant's testimony of her impairments without support based on medical documentation of her functional limitations due to her mental impairments does not support a finding that the listing is met. Listing 1.04, Disorders of the Spine was examined regarding the Claimant's low back pain and cervical radiculopathy diagnosed as degenerative disc disease; however, again the listing was not demonstrated to be met based on the medical evidence presented. The required nerve root impingement was not demonstrated and it is found, therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

In the present case, Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. The consultative examiner who examined the Claimant on two occasions noted that Claimant would be able to stand and walk for less than 2 hours in an 8-hour day, was limited to lifting less than 10 pounds frequently, and was noted as unable to reach or push and pull with both hands.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than one half block, due to left hip pain and pain in her feet, she could stand for 5 minutes, and could sit for 30 minutes. The Claimant testified she could not squat, due to knee pain, and has limited range of motion bending forward at the waist. The Claimant indicated that her right hand gets numb due to neck pain and carpal tunnel syndrome and that both her feet get numb. The Claimant can carry a quart of milk using both hands. The Claimant also noted that due to her severe depression and feelings of hopelessness she cries every day, and has had thoughts of suicide and at times has no desire to eat. The Claimant also isolates herself.

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 (last worked [REDACTED] was performing janitorial work. As such Claimant was required to lift trash containers weighing 45 to 50 pounds and lift a 5 gallon bucket of water to mop floors. The Claimant was on her feet most of the day. The Claimant's prior work would be categorized as unskilled medium work due to the varying weights carried while mopping floors and removing trash. The Claimant's testimony as regards why she could no

longer perform the janitorial work was due to her inability to lift only a quart of milk, her inability to stand sufficiently long to work, as well as inability to mop floors. The consultative examiner's findings also support the standing restrictions expressed by the Claimant through her testimony. This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations testified by the Claimant and confirmed by the several consultative examinations and by her treating pain management doctor's assessment and imposition of limitations, that Claimant is not capable of the physical activities required to perform any such position and cannot perform past relevant work, and 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 [REDACTED] and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a high school education and credibly testified that she has difficulty with math beyond basic addition, and difficulty reading. The Claimant's skills are non-transferable. The Claimant as previously noted has been restricted from pushing and pulling with both arms and hands due to her cervical disc disease and carpal tunnel syndrome and can only stand or walk less than two 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 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).

The evaluations and medical opinions of the consultative examiner who evaluated the Claimant twice consistently both times, and the Claimant's treating psychiatrist's evaluation is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record were considered in making this Decision. 20 CFR § 404.1527(d)(2). Deference was given by the undersigned to objective medical evaluations and clinical observations of the Claimant's treating psychiatrist. After a review of the entire record, including the Claimant's testimony and medical evidence

presented, and the objective medical evidence provided by the Claimant's treating psychiatrist who notes a GAF score of 45 and the consultative examiner who places the Claimant at less than sedentary, it is determined that the total impact caused by the combined physical and mental impairments suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments and mental impairments have a major impact on her ability to perform basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

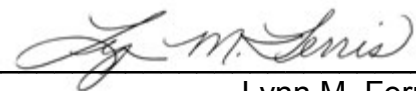
DECISION AND ORDER

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

Accordingly, the Department's determination is AFFIRMED 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 24, 2012 and applicable retro period (July 2012) if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for January 2015.



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

Date Signed: January 10, 2014

Date Mailed: January 10, 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]