

**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.: 2013-48721
Issue No.: 2009
Case No.: ██████████
Hearing Date: September 16, 2013
County: Wayne (19)

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 September 16, 2013, from Inkster, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ the Claimant's Authorized Hearing Representative, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker.

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 September 28, 2012 Claimant applied for MA-P and retro MA-P (June 2012).
2. On February 22, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated February 27, 2013 denying the Claimant's MA-P application. Exhibit 1

4. On May 13, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On August 2, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on September 16, 2013 ordering the claimant's Authorized Hearing Representative to submit additional medical evidence and a consultative mental examination.
7. February 3, 2014 the State Hearing Review Team denied claimant's request and found claimant not disabled.
8. Claimant at the time of the hearing was [REDACTED] years old with a [REDACTED] birth date. The Claimant is now [REDACTED] years old. Claimant's height was 5'2" and weighed 150 pounds. The claimant had gained 20 pounds within the last six months.
9. Claimant completed high school with some special education.
10. Claimant's prior work experience was factory assembly working assembling air valves. The Claimant also worked as a housekeeper for a motel.
11. The claimant has alleged mental disabling impairments including Depression. The Claimant has not received outpatient treatment.
12. Claimant alleges physical disabling impairments due to lumbar pain and left hip pain, as well as left leg pain with nerve damage.

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).

Claimant alleges physical disabling impairments due to lumbar pain and left hip pain as well as left leg pain with nerve damage.

The Claimant has alleged mental disabling impairments due to depression.

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

Claimant was admitted to the hospital on [REDACTED] for back pain. Noted recurrent problem. Pain present in lumbar spine, pain described as stabbing. An MRI of lumbar spine was performed with and without contrast. The MRI was correlated with previous an MRI in [REDACTED]. Stable lumbar vertebral body height and alignment and interspacing. No evidence of significant disc herniation or neuroforaminal narrowing. There is mild narrowing of the spinal canal from L3-4 to L5-6 due to underlying facet arthropathy and likely congenital narrowing of spinal canal. Impression, interval resolution of previously described paraspinal and epidural abscess formations with postsurgical changes identified as well as narrowing of the lower lumbar spinal canal. No evidence of disc herniation or neuroforaminal stenosis. The Claimant was discharged sometime after [REDACTED] as the medical records submitted are incomplete.

The Claimant was seen in the hospital ER on [REDACTED] for back pain, non-traumatic. The intake noted heroin use morning of admission. The x-rays of spine showed asymmetry of sacroiliac joint, chronic discontinued of the distal sacrum. Claimant was discharged in stable condition.

The Claimant was admitted to the hospital on [REDACTED] with history of IV drug abuse and Hepatitis C. Claimant presented with septic left sacroiliac joint. Report noted lower lumbosacral region without significant change of focal fluid collection to suggest epidural abscess at this time based upon MRI. History of Hepatitis C, IV drug abuse and history of back problem. Noted mild limp on left. Impression was septic arthritis, history of cocaine drug abuse and lower back problem history of multiple level spinal epidural abscesses treated previous year. Final consult low back pain with no neurological findings. Post-infectious changes to the S1 joint as seen on MRI related to post- infectious changes with degeneration of S1 joint. Claimant placed on antibiotics.

A consultative Mental Status Examination was conducted on [REDACTED]. The Claimant was alert, oriented and well groomed. Mood was mildly constricted but calm and pleasant. Patient was logical, goal directed and organized. Patient denied any symptoms of major depression or feelings of hopelessness or worthlessness without suicidal ideation or paranoia. Medical Source Statement notes some special education services due to specific learning disabilities although she is not evidencing any significant cognitive impairments or problems following 2 -3 step directions that would interfere with her ability to do work-related activities or routine tasks. There is no

medical evidence or objective data to suggest that psychiatric symptoms, depression or anxiety would interfere with her ability to do work-related activities or interact with others. Diagnosis indicated learning disability by report, indicated poly substance abuse in early remission, GAF 55. Prognosis guarded. Noted Claimant unable to manage benefit funds. The Mental Residual Functional Capacity Assessment noted Claimant not significantly limited in all categories except ability to travel in unfamiliar places or use public transportation, ability to set realistic goals or make plans independently, ability to carry out detailed instructions and ability to maintain attention and concentration for extended periods, which were all moderately limited.

In [REDACTED] a consultative exam was conducted. Noted history of multiple system organ failure from an abscess in the dorsolumbar spine. Claimant was admitted to the hospital with multiple system organ failure. At the time the Claimant had septic shock and cardiovascular collapse with renal failure at the time. A laminectomy T1 through S1 for the epidural abscess. The assessment was patient was emaciated, weak and anemic. She has generalized weakness, history of IV drug abuse, and long history of smoking. At this time there is no evidence of pulmonary hypertension, or cirrhosis of liver. Upper and lower extremities are within normal limits in functioning with generalized weakness of her muscles. Testing shows some limitation of motion in lumbar spine with straight leg raising bilaterally 0-80.

A CT of lumbar spine was performed on [REDACTED]012 which was normal.

There were additional medical records submitted regarding inpatient 3-day detox for heroin which was successfully completed. It is noted that much of the documentation was unreadable due to poor copy quality.

Here, Claimant has satisfied requirements as set forth in steps one, two, as Claimant was not employed at the time of the hearing having last worked in [REDACTED] 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 not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 1.04 Disorders of the Spine, was examined in light of the Claimant's low back lumbar pain. Based upon the objective medical evidence, MRI reports and CT referenced above, the Claimant does not meet the listing.

Listing 12.04 Affective Disorders was also considered and the Claimant, based upon the mental status examination, does not meet the listing. Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

Claimant has expressed a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant testified to the following symptoms and abilities: the Claimant could not walk more than one half block, could not perform a squat and could not bend at the waist. The Claimant could shower and dress by herself. The Claimant

had carpal tunnel surgery on her right hand 5 years ago and can carry up to 8 pounds. The Claimant also has pain in her left leg and hip recurrent causing her difficulty in walking distances and climbing stairs. The claimant had some limitations on range of motion in her back as shown by the consultative examination but the rest of the exam noted that she had generalized weakness of her muscles. The claimant's testimony was reasonably credible; however, the severity of the restrictions she testified to was not supported by the medical evidence presented.

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 was working as a factory assembler of air valves and housekeeping for a motel chain. This work required Claimant to be on her feet most of the day and in the factory job required some heavy lifting. The housekeeping job required climbing stairs and carrying cleaning supplies. Her work required that she stand or be on her feet most of the day, 50% to 80% of the time. This prior work requires abilities and capabilities that based on the limitations primarily presented by the Claimant's back surgery (laminectomy) cannot be any longer achieved by the claimant. Therefore it is determined that the 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, the Claimant was 42 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a high school education and has back pain and standing issues which did not meet a listing. No limitations were imposed as result of the consultative medical examination. 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).

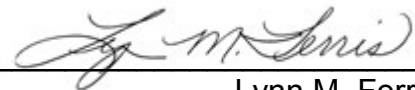
While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines 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).

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, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered and that the Claimant is capable of sedentary work as she cannot meet the required standing or sitting or lifting requirements for light work. It is also determined that while past drug addiction was present, drugs and alcohol were deemed not material to this decision.

In light of the foregoing, it is found that the 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 201.27, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

Accordingly, the Department's decision is hereby AFFIRMED.



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

Date Signed: March 6, 2014

Date Mailed: March 6, 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.

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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]
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