

**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 60057
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: December 11, 2013
County: Wayne (35)

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, a telephone hearing was held on December 11, 2013 in Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██, Claimant's Authorized Hearing Representative, also appeared. Participants on behalf of the Department of Human Services (Department) included ██████████, ES.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program and State Disability Assistance ("SDA") 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 April 23, 2013 Claimant applied for MA-P and State Disability Assistance (SDA).
2. On June 27, 2013, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated July 9, 2013 denying the Claimant's MA-P application. Exhibit 1

4. On July 18, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On September 10, 2013 the State Hearing Review Team (SHRT) found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on December 18, 2013 so that new Medical Evidence could be reviewed by the SHRT.
7. On February 12, 2014 the SHRT found the Claimant not disabled.
8. Claimant is ■ years old with a birth date of ■■■■■■■■■■
9. Claimant completed the 11th grade.
10. Claimant has employment experience working for a packing plant packing parts and operated a press. The Claimant also worked packing parts weighing 15 to 20 pounds. The claimant also was a housekeeper in a nursing home.
11. Claimant alleges physical impairments due to chronic cervical pain (neck), with lower back nerve compression with pain radiation and numbness in left leg and arthritis.
12. The Claimant alleges mental disabling impairments including depression. The Claimant has been in treatment since ■■■■■
13. Claimant's limitations have lasted for 12 months or more.

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.

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).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed; thus, is not disqualified at Step 1. The Claimant’s medical evidence referenced below also satisfies the requirement of severity of her impairment thus satisfying Step 2 of the required analysis based upon the objective medical evidence which follows.

Claimant alleges physical impairments due to chronic cervical pain (neck), with lower back nerve compression with pain radiation and numbness in left leg and arthritis.

The Claimant alleges mental disabling impairments including depression. The Claimant has been in treatment since [REDACTED]

The Claimant's treating psychiatrist completed a psychiatric evaluation on [REDACTED] [REDACTED]. The Claimant has treated for over a year and a half with her doctor and symptoms have existed since [REDACTED]. At the time of the evaluation the Claimant had new problems with auditory hallucinations and hearing from her mother, telling Claimant to join her and with noted deterioration of her ability to adequately care for self and more distressed, despondent and dysphoric. The Claimant presented as preoccupied and staring. The Mental Status Exam noted that Claimant was alert, verbal and appropriately dressed but did not maintain good eye contact. Psychomotor activity is slow but not retarded; is readily admitted to command hallucinations; has a fair awareness of right and wrong and consequences of behaviors. Diagnosis was Major Affective Disorder, Depression with psychosis. Passive Dependent personality characteristics. Prognosis was fair for remaining in the community but guarded for gainful employment. The Mental Residual Function Capacity Assessment assessed the Claimant as markedly limited in all categories, Understanding and Memory, Sustained Concentration and Persistence, Social Interaction and Adaption. The Claimant's therapist also wrote a letter regarding his observations that her mental and physical problems and impairments affect her overall ability to sustain gainful employment.

In [REDACTED] the Claimant was again seen for medication review by her psychiatrist and was found to still be experiencing auditory hallucinations, and continues with irritability, distractibility, oppositional and defiant behaviors. The doctor changed medication in light of headaches.

The Claimant was hospitalized for a 3 day stay on [REDACTED]. The Discharge diagnosis was viral gastroenteritis, uncontrolled hypertension, bradycardia, COPD, Dysplidemia, and Chronic Major Depression.

In [REDACTED] Claimant had laparoscopic cholecystectomy (gall bladder removal).

The Claimant was treated consistently for neck, back and arm pain. The report for Rehabilitation Physicians references disc abnormalities on imaging. The consistent impression over the period of the available records is right C6-C7 radiculopathy, shoulder tendonitis, right lateral epicondylitis, sacroiliac pain, history of wrist fracture and need for bladder surgery and hernia surgery. Vicodin and Neurontin were prescribed. The treater also noted that a cervical epidural was scheduled. In [REDACTED] [REDACTED] the claimant was noted to have an unsteady gait and was using a cane. The Claimant was seen in [REDACTED] and noted neck range of motion is still limited with swelling and antalgic gait. The exam recommendations conclude that if neck and radicular pain continue, Claimant will follow with a referred doctor for surgical fusion. In [REDACTED] back and leg pain was increasing with negative straight leg raising and noted new L5 radiculopathy. An epidural injection was scheduled. In [REDACTED] the

examiner noted MRI of cervical and lumbar area with degenerative changes but MRIs were not provided.

The Claimant's treating doctor completed a medical Examination Report on [REDACTED] [REDACTED]. The diagnosis was neck, shoulder and back pain with associated right leg pain and left arm pain. The exam notes indicate unsteady gait; C6-7 weakness based upon CT and MRI. Clinical impression was Claimant was stable and that limitations were imposed of occasionally lifting less than 10 pounds, no reaching pushing/pulling with either hand. Stand or walk limited to 10 to 20 minutes. Sitting limited to 10 to 20 minutes. The Claimant was also found to be unable to meet her needs in the home and needed assistance with household chores.

The Claimant's attending physician also completed an examination in [REDACTED] which imposed limitations on sitting, standing, bending, stooping, carrying (less than 5 pounds), pushing and pulling, squatting and climbing stairs. The exam noted that range of motion in lumbar was significantly limited and positive straight leg raising in while seated and supine.

Listing 12.04 Affective Disorders Sections A and B were examined in light of the objective medical evidence and it was determined that Claimant, based upon her treating psychiatrist's evaluation of Major Affective Disorder–Depression with psychosis, meets the medical equivalent of the listing, and thus is determined to be disabled at Step 3.

Additionally based upon the objective medical evidence reviewed above, the Claimant's treating physician's evaluations and the limitations imposed, and the deteriorating nature of the Claimant's health as documented, it is clear Claimant could not perform her past relevant work as a housekeeper, press operator or parts packer.

The Claimant was [REDACTED] years of age at the time of the application and thus is considered an individual closely approaching advanced age. In light of the foregoing, it is found that the Claimant lacks the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform even basic work activities, and thus it is determined that even if Claimant were found not to be disabled at Step 3 due to her mental impairments, that the Claimant has the residual functional capacity for less than sedentary work. Thus, based upon her treating doctor's evaluation, the Claimant would have been found disabled for purposes of the MA-P on this basis as well.

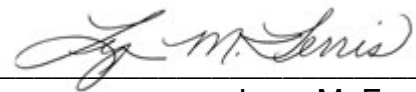
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled not disabled for purposes of the MA-P and/or SDA benefit program.

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 applications for MA-P and SDA dated April 23, 2013, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for SDA benefits the Claimant is otherwise entitled to receive in accordance with Department policy and this Decision.
3. A review of this case shall be set for March 2015.



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

Date Signed: March 7, 2014

Date Mailed: March 7, 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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]