

**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.: 2014-17883
Issue No.: 2009
Case No.: ██████████
Hearing Date: April 14, 2014
County: Cass County

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 14, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included

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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 10, 2013, Claimant applied for MA-P.
2. On November 15, 2013, the Medical Review Team denied Claimant's request.
3. On December 11, 2013, Claimant submitted to the Department a request for hearing.
4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 53 years old.

6. Claimant completed education through high school and obtained a medical assistant certificate.
7. Claimant has employment experience as an immunization file clerk and this position required her to sit the majority of the day, stand/walk less than 2 hours a day, and lift less than 10 pounds. Claimant previously worked as a certified nursing aide. This position required standing/walking the majority of the shift, limited sitting and lifting in excess 50 pounds. Claimant previously worked as a bartender. This position required standing/walking the majority of the shift, limited sitting and lifting 25 pounds.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from left hip and leg problems, bone spurs, fibromyalgia, left sacroiliac osteoarthritis, left lumbosacral osteoarthritis, left lower extremity radiculopathy and degenerative disc disease.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

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

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect

judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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

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

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. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with left hip and leg problems, bone spurs, fibromyalgia, left sacroiliac osteoarthritis, left lumbosacral osteoarthritis, left lower extremity radiculopathy and degenerative disc disease. Claimant provided copies of her medical records for consideration. Included in these records was a [REDACTED] MRI of the brain which indicated a normal magnetic resonance imaging of the brain. A [REDACTED] MRI of the cervical spine revealed mild bilateral C5-C6 spondylosis producing minimal foraminal narrowing and C6-C7 disc degeneration with disc bulging on the left and right producing mild central foraminal narrowing bilaterally. A [REDACTED] MRA of the extracranial carotid and vertebral circulation revealed a normal magnetic resonance angiography of the extracranial carotid and vertebral circulation. An [REDACTED] x-ray of the left hip and pelvis revealed pelvis/left hip was negative. An [REDACTED]

██████ MRI of the lumbar spine revealed very mild disc degeneration at L1-L2 with some mild disc bulging. At L4-L5 there is a degenerative anterolisthesis of L4 on L5, annular disc protrusion, hypertrophic facet arthropathy and ligamentous hypertrophy all combining to produce moderately severe central canal stenosis and moderate to moderately severe central left and moderate central right foraminal stenosis. No compression fracture is identified. The conus of the spinal cord terminates at the mid L1 vertebral body level.

A treatment note from Claimant's physician ██████████, indicates Claimant suffers with lumbosacral osteoarthritis, degenerative disc disease and left lower extremity radiculopathy. She was noted to be alert x3. She had a mild antalgic gait, normal coordination and balance. Tenderness noted on the lumbosacral region L4-L5, L5-S1 and the left sacroiliac joint with significant paraspinal muscle spasm. She was noted to have good range of motion. She had 5/5 strength in her bilateral lower extremities. Sensation was intact to light touch, 2+ pulses. Bilateral upper extremities have no tenderness or swelling. Functional range of motion.

A pain clinic report completed ██████████ indicated the following: noted regular gait. Her toe gait increases her toe pain. Heel gait was normal. Tandem gait was within normal limits and increased her back pain. Turning her head left increased her pain as did extension. Turning her head right did not change symptoms. Exam of the spine, ribs and pelvis was normal excepted noted full range of motion caused pain. Exam of her lower and upper back revealed generalized tenderness. Exam of upper extremities revealed full range of motion with stability, muscle strength of 5/5 and normal tone. Exam of lower extremities revealed full range of motion with stability, muscle strength of 5/5 and normal tone. Negative straight leg test bilaterally in sitting position.

A DHS-49 completed by Claimant's treating orthopedic physician noted a diagnosis of lumbosacral osteoarthritis, degenerative disc disease, LLE radiculopathy. Claimant was found to be alert and oriented. She was found to have a mild antalgic gait with normal balance. Her condition was found to be stable and noted to have no physical limitations.

Claimant testified to the following symptoms and abilities: chronic daily pain, pain in back, left leg, pain in neck, left hip pain, numbness and tingling in neck and running down arm, trouble with memory, headaches, knee and left ankle hurt, tired and is easily fatigued, doesn't use any assistive devices to walk around, can walk a half block, can stand 20 minutes, can sit 20 minutes, hands go numb, limited ability to bend and stoop, able to manage household chores, needs help with grocery shopping and able to drive limited distances.

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 as an

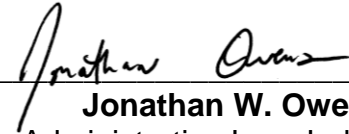
immunization file clerk and this position required her to sit the majority of the day, standing/walking less than 2 hours a day and lifting less than 10 pounds. Claimant previously worked as a certified nursing aide. This position required standing/walking the majority of the shift, limited sitting and lifting in excess 50 pounds. Claimant previously worked as a bartender. This position required standing/walking the majority of the shift, limited sitting and lifting in 25 pounds. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is capable of the physical or mental activities required to perform her past position as an immunization file clerk. 20 CFR 416.920(e).

Since this Administrative Law has found Claimant capable of performing her past employment position as an immunization file clerk, she is not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHeld.



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

Date Signed: April 16, 2014

Date Mailed: April 17, 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;

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- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

JWO/pf

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