

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2013 30084
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 9, 2013
County: Wayne County DHS (76)

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 9, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

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 December 10, 2012, Claimant applied for MA-P.
2. On January 31, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated February 5, 2013 denying the Claimant's MA-P application. Exhibit 1
4. On, February 15, 2013, the Claimant submitted to the Department a timely hearing request.
5. On August 14, 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 13, 2013 ordering the Claimant to obtain completed DHS 49 and DHS 49 D and E and the Department to obtain medical records.
7. On May 2, 2014 the State Hearing Review Team denied Claimant's request and found Claimant not disabled.
8. Claimant at the time of the hearing was 50 years old with a birth date of [REDACTED]. The Claimant is now 51 years of age. Claimant height was 5' 9" and weighed 182 pounds.
9. Claimant completed 12th grade and obtained a high school degree.
10. Claimant's prior work experience includes clerical/secretarial work, preschool teacher's aid. The Claimant was also a direct care worker providing care to substance abuse patients.
11. The Claimant has alleged mental disabling impairments due to depression.
12. Claimant alleges physical disabling impairments due to chronic pain in lower back and right leg, arthritis in spine, sciatica and hypertension.
13. Claimant's impairments have lasted or are expected to last for 12 months duration 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.

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 chronic pain in lower back and right leg, arthritis in spine, sciatica and hypertension.

The Claimant has alleged a mental disabling impairment due to depression.

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

The Claimant has treated for a number of years since 2009 ongoing for depression. A Mental Residual Functional Capacity Assessment was performed on June 1, 2013 by Claimant's treating psychiatrist. Claimant was markedly limited in understanding and memory with regard to her ability to understand and remember detailed instructions, and was moderately limited in her ability to remember locations and work like procedures or understand and remember one or two-step instructions. The Claimant was markedly limited in her ability to carry out detailed instructions and the ability to maintain attention and concentration for extended periods. The Claimant was also markedly limited in her ability to sustain an ordinary routine without supervision. As regards social interaction, the Claimant was moderately limited in her ability to interact appropriately with public, to accept instructions and respond appropriately to criticism from supervisors and get along with coworkers or peers without distracting them or exhibiting extreme behaviors. The Claimant was not limited significantly in ability to ask questions and is for ask for assistance as well as maintain socially appropriate behavior. The Claimant was markedly limited in her adaptation and ability to travel in unfamiliar places or use public transportation. The Claimant was moderately limited in adapting to changes in the work setting and make or set goals independently of others.

A previous Mental Residual Functional Capacity Assessment was performed on December 6, 2012 at which time the Claimant was evaluated as moderately limited and was only markedly limited in the ability to work in coordination with or proximity to others without being distracted and the ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes. This examination was also completed by the Claimant's treating psychiatrist.

A psychiatric examination report was completed On July 13, 2013. The Claimant was noted to be in pain. The Claimant was oriented to time place, person, and judgment and logic was noted as normal however, the report noted that the Claimant's depression does impact the Claimant's perception of well-being and the Claimant's outlook on the future. The Diagnosis Was Major Depressive Disorder recurrent. The GAF score was 45.

A medical examination report was completed on September 20, 2013 by the Claimant's family practice doctor. The doctor had treated the Claimant since 2008. At the time of the examination, the diagnosis was hypertension, back pain with radiculopathy and knee pain, and hyperlipidemia. The Claimant was evaluated as stable and limitations were imposed which were expected to last more than 90 days. The Claimant could lift frequently 10 pounds and only occasionally 20 pounds. The Claimant could stand

and/or walk two hours in an eight-hour workday, no sitting restrictions were noted. A cane as an assistive device was medically necessary. The Claimant had full use of her hands and arms with no restrictions, as well as her feet and legs with no restrictions.

Claimant has treated at the [REDACTED] for pain management for her back and extremities. The Claimant began this treatment in April 2012 and continues ongoing. The doctor treating her for pain management has diagnosed Lumbosacral radiculopathy and degeneration of lumbar intravertebral discs. The Claimant was prescribed opioids. On May 24 2013, the Claimant received a lumbar epidural steroid injection for her lumbar radiculopathy. On July 19, 2013 and September 13, 2013, steroid injections were received by the Claimant.

The Claimant was seen on November 21, 2011 at the emergency room for severe back pain with sciatica and was given pain relief medications.

The Claimant was referred for physical therapy due to her degenerative lumbar disc disease on March 14, 2012. An x-ray of the Claimant's lumbosacral spine was performed on November 21, 2011 which showed minimal arthritis L4- L5 and L5 – S1 with slight narrowing intravertebral space L5- S1.

An MRI of the lumbar spine was performed March 8, 2012. The impression was disc bulging at L4 – L5 and L5 – S1 disc space. Minimal compromising neuroforaminal on the left for L4- L5 and right at L5 – S1 disc space.

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, 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 ongoing treatment and steroid injections for back pain. The listing requires evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); A review of the Claimant's MRI evidence did not support a finding of any nerve root compression and straight leg raising was negative thus the specific criteria required by the listing were not met based upon the medical evidence. Listing 12.04 Affective Disorders (Depression) was also reviewed and although the Claimant was markedly limited in some relevant work related categories, her limitations did not meet the overall severity requirements of this Listing. 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 carry the laundry up and down stairs. Claimant could not walk

more than a block due to back and knee pain. She could stand for 30 minutes and needed to use a cane when standing and walking. The Claimant also could sit no longer than 30 minutes. The Claimant could not squat. The Claimant testified she could bend at the waist with use of her cane. The heaviest weight the Claimant could carry was 8 pounds. The Claimant could not squat or touch her toes.

The Claimant's family practice doctor imposed limitations which were imposed and which were expected to last more than 90 days. The Claimant could lift frequently 10 pounds and only occasionally 20 pounds. The Claimant could stand and/or walk two hours in an eight-hour workday, no sitting restrictions were noted. A cane as an assistive device was deemed medically necessary. The Claimant had full use of her hands and arms with no restrictions as well as her feet and legs.

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 includes clerical/secretarial work, and preschool teacher's aide. The Claimant was also a direct care worker providing care to substance abuse patients. In these positions, the Claimant was on her feet all day and was required to lift and assist and restrain patients. The Claimant lifted patients of varying weights. As a preschool teacher, the Claimant was required to stoop and kneel taking care of 3 year olds. The Claimant's work was semi-skilled, but the skills are not deemed transferable, and therefore transferability is not an issue. This prior work requires abilities and capabilities that based on the limitations presented 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 50 years old, and at the time of the application was 4 months from 50 years of age, therefore the Claimant is considered a person approaching advanced age for MA-P purposes. The Claimant has a high school education and has been restricted with lifting limitations. In addition, the Claimant has been found markedly limited in several important areas which would affect her ability to sustain ongoing employment as outlined above, with a GAF score of 45, and regularly receives steroid injections for pain. The Claimant's current residual functional capacity makes her capable of performing sedentary work. 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 credible testimony and medical evidence presented, it is determined that the Claimant is capable of sedentary work. This determination is based on the physical examination conducted by the Claimant's treating family practice doctor, her psychiatric evaluation by her treating psychiatrist and her ongoing treatment for low back pain with ongoing steroid injections. Therefore, it is determined that the total impact caused by the physical impairments suffered by the Claimant in combination with the documented mental impairments and ongoing major depression which is chronic must be considered. These medical conditions support the finding that the Claimant's is capable of sedentary work as she cannot meet the lifting requirements for light work which requires ability to lift 20 pounds. In doing so, it is found that the combination of the Claimant's physical impairments and mental impairments taken in their totality and in combination have a major impact on her ability to perform basic work activities requiring a finding that she is capable of sedentary work.

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 201.14, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

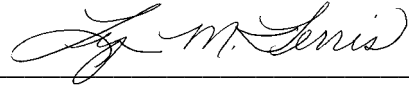
DECISION AND ORDER

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 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. The Department is ORDERED to initiate a review of the application dated December 10, 2012 if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for May 2015.



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

Date Signed: May 29, 2014

Date Mailed: May 29, 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

2013-30084/LMF

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/tm

cc:

