

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



Reg. No.: 2013 54225
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: November 27, 2013
County: Oakland (63-02)

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 November 27, 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) and State Disability Assistance (SDA) programs?

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 4, 2013 Claimant applied for MA-P and SDA.
2. On June 4, 2013, the Medical u Review Team found the Claimant was not disabled.
3. The Department sent the Claimant the Notice of Case Action on June 11, 2013 denying the Claimant's MA-P application.
4. On, June 14, 2013 Claimant submitted to the Department a timely hearing request.

5. On August 18, 2013 the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request except for the month of December 2013 due to Claimant dying on December 31, 2013.
6. An Interim Order was issued on December 2, 2013 ordering the Department to schedule a consultative medical examination(s) and to receive additional medical evidence submitted at the hearing by the Claimant’s AHR.
7. On March 31, 2014 the State Hearing Review Team denied claimant’s request and found claimant not disabled.
8. Claimant at the time of the hearing was 49 years old with a birth date of [REDACTED]. Claimant’s height was 5 feet and weighed 145 pounds.
9. Claimant completed high school.
10. Claimant’s prior work experience was as a cashier, telemarketing, and worked in a laundry washing linens and as a crossing guard.
11. The claimant has alleged mental disabling impairments due to depression and anxiety.
12. Claimant alleges physical disabling impairments due to loss of peripheral vision, paroxysmal atrial fibrillation, hypertrophic cardiomyopathy and stroke history in 2011.
13. The Claimant died on [REDACTED].

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 loss of peripheral vision, paroxysmal atrial fibrillation, hypertrophic cardiomyopathy and stroke history in 2011.

The claimant has alleged a mental disabling impairment due to depression and anxiety.

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

After the hearing the Department was notified by the SHRT that the Claimant died on December 31, 2013 with cause of death noted on the Death Certificate hypertensive and arteriosclerotic cardiovascular disease.

The Claimant was seen on May 2, 2013 by a doctor to be treated for atrial fibrillation. At the time she was seen she was completely asymptomatic and denied chest pain, dyspnea, PND, orthopnea, palpitations, syncope, claudication or stroke symptoms. The Claimant was given a physical exam which noted that the exam was essentially unremarkable. The impression was paroxysmal atrial fibrillation. Hypertrophic cardiomyopathy and stroke history in 2011. The doctor advised the Claimant to begin seeing an internist noting that since the stroke, the Claimant had not followed up with an internal medicine physician or cardiologist since. The doctor could not manage Claimant's INR (anti-coagulant) treatment. The claimant's blood pressure was 138/72.

The Claimant was seen on December 11, 2013 for a consultative exam arranged by the Department. The impression was CVA. The Claimant's corrected vision was 20/25 in right eye and 20/20 for left eye. She did have permanent visual field loss. Vaginal bleeding was reported and noted rule out cervical cancer with history of cervical cancer 10 years ago, with radiation and chemotherapy. There is possible pelvic mass. Anxiety and Depression she sees a psychiatrist regularly and is on medications for this condition. The examiner did impose limitations. Claimant could lift/carry occasionally 20 pounds and 25 pounds and frequently 10 pounds. The claimant could stand and/or walk at least two hours in an eight hour work day. The claimant could sit about six hours in an eight hour workday. No assistive devices were necessary. There were no restrictions regarding the use of her hands or arms for repetitive actions including grasping, reaching, pushing/pulling in fine manipulation. The claimant was evaluated as capable of meeting her needs in the home. Straight leg raising was negative bilaterally. At the time of the exam the claimant could squat and arise from a squat, and get on and off the examining table without any difficulty. Claimant could stoop, bend, stand and sit.

A psychiatric examination report was prepared on December 30, 2013 by claimant's treating psychiatrist. At the time of the exam the claimant was on Abilify, Ativan and Prozac by prescription. Her behavior was cooperative mood was depressed/anxious with labile affect. Psychomotor activity within normal limits, speech was pressured and thought process was goal oriented with thought process and content within normal limits. The report noted that the claimant was anxious to go out by herself but enjoyed visiting with friends and family. The diagnosis was major depressive disorder. The GAF score was 50.

A Mental Residual Functional Capacity Assessment was also completed in December 2013. The claimant was not significantly limited in understanding and memory sustained concentration and persistence ability to perform activities within the schedule and maintain attendance ability to sustain an ordinary routine. The claimant was moderately limited in her ability to work in coordination with proximity to others, make simple work-related decisions and to complete a normal workday and worksheet without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number of rest periods. The claimant was not significantly limited in any category of social interaction and adaptation except for the ability to respond appropriately to changes in the work setting which was only moderately limited. The claimant at the time of the hearing was treating with the psychiatrist and had been doing so for at least two years. Treatment records from the claimant's community mental health trader indicate that she had been stable since her treatment began in July 2012 due to her stroke.

An earlier mental residual functional capacity exam done in January 2013 completed April 2013, noted the claimant was markedly limited in four categories which was ability to understand and remember detailed instructions, the ability to carry out detailed instructions, ability to maintain attention and concentration and ability to work in coordination with or proximity to others without being distracted by them and to respond appropriately to changes in a work setting. The remainder of the limitations were moderate

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not substantially gainfully 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 12.04 Affective Disorders and 12.06 Anxiety were reviewed and based upon the exam results by the treating psychiatrist and the results documenting that the Claimant was as not significantly limited in most categories with no marked limitations, and .with no limitations in social interaction and Adaption the Lisiting(s) were not met for Depression 12.04 or Anxiety 12.06. The Listings contained in the Cardiovascular Systems 4.0 were examined. Listing 4.5 Recurrent Arrhythmias was examined but was determined as not met as there was no objective medical evidence of testing or clinical evidence to support a finding that the listing was met.

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 can do her laundry and light household work. Notwithstanding vision loss the Claimant can still drive and grocery shops. The Claimant testified credibly that she

could stand a couple of hours and sit an hour. She does experience pain when walking and can squat and bend at the waist. She can shower and dress herself and could carry up to 8 pounds and cooks dinner.

The Consultative examiner found there were limitations. Claimant could lift/carry occasionally 20 pounds and 25 pounds and frequently 10 pounds. The claimant could stand and/or walk at least two hours in an eight hour work day. The claimant could sit about six hours in an eight hour workday. No assistive devices were necessary. There were no restrictions regarding the use of her hands or arms for repetitive actions including grasping, reaching, pushing/pulling in fine manipulation. The claimant was evaluated as capable of meeting her needs in the home. Straight leg raising was negative bilaterally. At the time of the exam the claimant could squat and arise from a squat, and get on and off the examining table without any difficulty. Claimant could stoop, bend, stand and sit. The examiner's evaluation places the Claimant at sedentary due to the restriction that she can stand and walk two hours in an eight hour day and can sit for six hours in an 8 hour work day.

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 a cashier, telemarketing, and worked in a laundry washing linens and as a crossing guard. The Claimant's work was unskilled and therefore transferability is not an issue. Some of the prior work, including cashiering, crossing guard and laundry work are jobs the Claimant can no longer do because of the standing required. The Claimant could however still perform her telemarketing job as the job requires sitting most of the day. Therefore it is determined that the Claimant was capable of performing past relevant work and therefore is deemed not disabled at Step 4.

Assuming arguendo that a Step 5 analysis was necessary, the Claimant's testimony of her abilities and the consultative examiner's evaluation place the Claimant as capable of performing sedentary work. Thus given the Claimant's age, 49, high school education which places her in the category of a younger individual, and given that unskilled work is considered transferable the Claimant would be deemed disabled at Step 5 as well, as it is determined based upon her testimony and the consult evaluation that Claimant was capable of performing sedentary work.

The Claimant's death certificate was provided by the State Hearing Review Team and indicates that she died December 31, 2013. Per Department policy found in BEM 260 the individual (Claimant) is to be considered disabled in the month of their death. Thus policy requires a finding of eligibility for month of December 2013 only as required by Department Policy. BEM 260, pp.1, (7/1/13).

The State Disability Assistance 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.

In this case, the Claimant is found not disabled for purposes of the MA-P program; therefore, is found not disabled for purposes of SDA benefit program as well.

In addition based upon BEM 261 PP.1 (1/1/12) the Claimant would not be eligible for SDA for the month of December 2013 as she was not certified as unable to work due to mental or physical disability for at least 90 days from the onset of disability. BEM 261 provides:

DISABILITY A person is disabled for SDA purposes if he:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability.

In light of the foregoing, it is found that the Claimant is not disabled for the period beginning with her application dated 4/4/13 through November 30, 2013, but is disabled for the one month period for December 2013.

DECISION AND ORDER

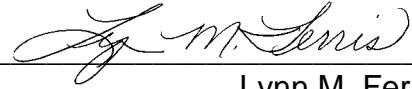
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled for December 2013 only.

Accordingly, the Department's decision is hereby **AFFIRMED** as to the period April 4, 2013 through November 30, 2013.

The Department's decision is hereby **REVERSED**, as to the period December 1, 2013 through December 31, 2013.

1. The Department shall initiate processing of (if not previously done so) the April 4, 2013 application for MA-P, to include all applicable retroactive months if any, to determine if all other non-medical criteria are met and inform the Claimant of the determination in

accordance with department policy for the month of December 2013.



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

Date Signed: May 2, 2014

Date Mailed: May 2, 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/tm

2013-54225/LMF

cc:

