

**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 9131
Issue No.: 2009
Case No.: ██████████
Hearing Date: March 5, 2014
County: Wayne (82-18)

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 March 5, 2014, from Detroit, Michigan. Participants on behalf of Claimant included 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) and State Disability Assurances 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 June 27, 2013, Claimant applied for MA-P.
2. On October 9, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated October 14, 2013 denying the Claimant's MA-P application, retro application.
4. On, October 24, 2013 Claimant submitted to the Department a timely hearing request.

5. On September 25, 2013, the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request. Exhibit 2
6. An Interim Order was issued March 7, 2014 requesting the Claimant obtain a DHS 49 from her primary care treating. Additional new medical evidence was submitted to the State Hearing Review Team on April 18, 2014.
7. The State Hearing Review Team issued a decision on June 9, 2014 which found the Claimant was not disabled and denied Claimant’s request.
8. Claimant at the time of the hearing was 56 years old with a birth date of [REDACTED].
9. Claimant completed a high school education.
10. Claimant’s prior work experience included working as a gate agent at Detroit Metropolitan Airport, working for optometrists as a retail sales associate selling eyeglasses and frames. Claimant was a receptionist for an insurance company and also worked as a tele-marketer.
11. The Claimant has not alleged mental disabling impairments.
12. Claimant alleges physical disabling impairments due to chronic back, shoulder and neck pain, fibromyalgia and osteoarthritis in her spine.
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 back, shoulder and neck pain, fibromyalgia and osteoarthritis in her spine.

The Claimant has not alleged mental disabling impairments.

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

On March 20, 2014, the Claimant was seen by her treating physician who has treated Claimant since 2009. At that time, the diagnosis was hypertension, allergic carina cystitis and insomnia, as well as low back pain, muscle pain, hypertension and scoliosis. During the examination, the doctor noted pain in low back neck and shoulders. The Claimant's condition was stable. Limitations were imposed-the Claimant could lift less than 10 pounds occasionally. The Claimant could stand and or walk less than two hours in an eight-hour workday. The Claimant could sit less than six hours in an eight-hour workday, assistive devices were not deemed necessary. The Claimant could not push or pull with either hand or arm and could not operate foot controls with either foot. There were no mental limitations listed.

On July 11, 2012, an Internal Medicine Examination was conducted on behalf of the Social Security Administration. At that time, the Claimant alleged fibromyalgia arthritis in the neck, shoulder, spine, hips and fingers and numbness in both hands. A thorough examination was conducted. The impression was probable generalized osteoarthritis of the back, hips, shoulder, neck and hands. History of two previous motor vehicle accidents. History of scoliosis and fibromyalgia. The exam concluded the Claimant has normal function, strength and range of motion of the upper and lower extremities. She has minimum restrictions on her ability to walk. The Claimant does suffer from generalized osteoarthritic type pain which affects her ability to lift heavy objects and decreases her stamina. She is able to take care of herself independently and do light chores as needed around the house. The Claimant seems capable of non-strenuous activities with lifting of no more than 15 pounds. The Claimant's ability to perform work related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and traveling, as well as pushing and pulling heavy objects, appears to be at least moderately impaired due to the objective findings described above. The exam restricted Claimant's ability to stand to 20 minutes.

An MRI of the lumbar spine was performed on April 30, 2011. The impression was mild circumflex disc bulge slightly asymmetric at L2 – L3 causing minimal encroachment upon the left exiting neural canal without nerve root impingement. Mild – moderate circumferential disc bulge and facet arthritis and L3 – L4 causing minimal effacement upon the thecal sac and mild encroachment upon the exiting neural canals without nerve root impingement; circumferential disc bulge slightly asymmetric and towards the L4-L5. This finding coupled with facet arthritis and ligament flavum hypertrophy is narrowing the exiting neural canals with the right slightly worse than the left, no evidence of nerve root impingement or high grade spinal stenosis. Mild – moderate

arthropathic changes otherwise are present within the various levels of the lumbar spine is detailed above. No evidence for large herniation or spinal stenosis. There is an 11.6° levoconvex rotoscoliosis of the lumbar spine.

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 1.02 Major Dysfunction of a Joint(s) due to any cause) and Listing 1.04 Disorders of the Spine were examined in light of the Claimant's back, neck and shoulder pain. After a review of the objective medical evidence it did not support a finding the listing requirements were not met as the Claimant was still able to ambulate and the necessary showings of nerve root impingement were not present. 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 credibly testified that she can stand approximately 20 minutes and sit 30 minutes, but then must stand and move, due to pain. The Claimant can walk approximately one block and then must stop due to back pain. The Claimant testified that she cannot perform a squat and can bend only partially at the waist and only two thirds of the way when bending forward. The Claimant can tie her shoes, and can shower and dress herself. The heaviest weight the Claimant could carry was 8 pounds. The Claimant can grocery shop but must use the grocery cart for support. The Claimant has difficulty climbing stairs and must use a handrail for assistance. The Claimant cannot vacuum around her house and needs assistance carrying her laundry.

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.

The Claimant's prior work involved working as a gate agent at Detroit Metropolitan Airport and working for optometrists as a retail sales associate, selling eyeglasses and frames. Claimant was a receptionist for an insurance company and also worked as a tele-marketer.

The Claimant's work was unskilled and is not transferable to skilled work, therefore transferability is not an issue. This prior work requires abilities and capabilities for a range of light to sedentary unskilled work that based on the limitations presented cannot be any longer achieved by the Claimant due to the standing and lifting, pushing and pulling, lifting and squatting requirements of these jobs. 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 56 years old, and thus is considered a person advanced age for MA-P purposes. The Claimant has a high school education and has been restricted by her treating primary care doctor with limitations on standing less than 2 hours in an 8-hour workday and sitting less than 6 hours in an 8-hour workday. The treating doctor indicated that the Claimant could not perform pushing or pulling repetitive tasks with either arm or operate foot controls. The Claimant's lifting is also restricted to less than 10 pounds occasionally. The consultative examiner in an examination which is now two years old, placed the Claimant at a sedentary work level and restricted the Claimant to standing less than 20 minutes and lifting no more than 15 pounds. For this reason, this examination due to its age is not deemed as reliable as the treating physician's evaluation completed three months ago. The MRI was also considered as the Claimant has some objective signs of significant back problems which fell short of nerve root impingement, but formed a basis for the Claimant's subjective complaints of chronic back pain. 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, and the objective medical evidence, particularly the treating doctors' more recent evaluation and limitations, with imposition of continuing limitations on standing and lifting pushing and pulling, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered.

The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§

404.1527(d)(2), Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physician. 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's treating physician who places the Claimant at less than sedentary, the total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments have a major impact on her ability to perform basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

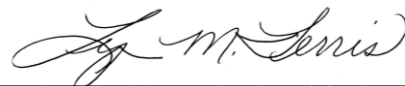
DECISION AND ORDER

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 June 27, 2013, and applicable retro period, if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for June 2015.



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

Date Signed: June 30, 2014

Date Mailed: June 30, 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

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