

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

IN THE MATTER OF:



Reg. No.: 2014 23318
Issue No.: 2009, 4009
Case No.: 1 [REDACTED]
Hearing Date: April 10, 2014
County: Macomb DHS (12)

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 April 10, 2014 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. A witness, [REDACTED], also appeared for the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Hearing Facilitator, and [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 July 30, 2013, Claimant applied for MA-P and SDA.
2. On November 13, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated (unknown) denying the Claimant's MA-P and SDA application. Exhibit 1

4. On January 16, 2014, the Claimant submitted to the Department a timely hearing request.
5. On March 19, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on April 11, 2014 ordering the Department to obtain medical records due to hospitalization, and additional DHS 49's from the Claimant's treating doctors. The additional medical evidence was submitted to the SHRT on June 17, 2014.
7. On July 1, 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 6 '2" and weighed 286 pounds. The Claimant has lost 100 pounds within the last six months. The Claimant is morbidly obese with a BMI of 37.
9. Claimant completed a master's degree in social work.
10. Claimant's prior work experience was as a case manager and has worked in detention centers for young adults; as a case manager for adult foster care patients; and managing ex-offenders, as well as a family social worker. Most of these positions required the Claimant to do field work 4 days per week.
11. The Claimant has not alleged any mental disabling impairments.
12. Claimant alleges physical disabling impairments due to multiple right ankle surgeries and fixation with ongoing osteomyelitis, pulmonary embolism, lungs and lower extremities, and back pain. At the time, of the hearing the Claimant walked with a cane.
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).

The Claimant has alleged physical disabling impairment due to multiple right ankle surgeries and fixation with ongoing osteomyelitis, pulmonary embolism, lungs and lower extremities, and back pain. At the time of the hearing the Claimant walked with a cane.

The Claimant has not alleged any mental disabling impairment.

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

A Medical Examination Report was completed by the Claimant's treating Doctor on April 28, 2014. At that time, the diagnosis was ankle pain and acute arthridosis. At the time the Claimant was 6'2" tall and weighed 284 pounds. The examination noted ankle and chronic pain. With regard to cardiovascular, the note indicated pulmonary embolism and deep vein thrombosis. Chronic pain of the ankle and right foot pain while standing due to an open wound of the right ankle. The clinical impression was that the Claimant was improving but limitations were imposed restricting the Claimant from lifting never less than 10 pounds, and the limitation was expected to last more than 90 days. The Claimant could operate foot/leg controls with the left leg only. The findings that supported the limitations noted Claimant was unable to bear weight on the right leg or foot. Pain with standing on right ankle, open wound with hardware exposed and right foot swollen. The doctor evaluated the Claimant as being unable to meet her needs in the home and required assistance with cooking, cleaning, transferring to the bed and bathing.

An additional Medical Examination Report was completed on April 28, 2014 by the same doctor regarding the pulmonary embolism, deep vein thrombosis and osteomyelitis of the right leg specifically. The doctor noted that he had seen the Claimant since 2007. The current diagnosis was acute pulmonary embolism of lungs, leg and back osteomyelitis. On examination, the doctor noted the Claimant was unable to stand for long periods. Pulmonary embolism, deep vein thrombosis was noted for both legs. The musculoskeletal exam noted unable to bear weight on right leg and ankle due to open wound with hardware exposed and limited sensory feeling to right foot. The clinical impression was improving and the same limitations were imposed including assistance with meeting her needs in the home as set forth in the prior paragraph.

The Claimant was admitted to the hospital on February 6, 2014 for a 15-day stay. On admission, a scan for bi lateral lower extremity venous evaluation was performed. The scanning showed that the mid-femoral vein was occluded, as well as the popliteal vein

with a hypoechoic intraluminal filling defect. The soleal vein and lesser saphenous vein were also occluded. The conclusion was right acute deep vein thrombosis in mid-femoral vein and popliteal vein. Left lower extremity deep veins were within normal limits. The Claimant, during her hospitalization, also received several blood transfusions. The Claimant was diagnosed with osteomyelitis of the right ankle. At the time, the Claimant also had an infection confirmed of the right ankle. CT of the right ankle and leg was performed the impression was lucent and sclerotic areas are demonstrated involving the distal tibia/fibula and talus and calcaneus; findings again may represent chronic osteomyelitis. A CT exam of the thorax was also performed with the impression bilateral pulmonary emboli, mixed attenuation peripherally located posterior, right upper lobe lesion, cardiomegaly with scattered coronary artery calcifications, and tiny pericardial effusion or thickening.

A CT of the ankle noted postsurgical changes of the ankle with hardware. Sclerotic and Lucent areas at the ankle joint are unchanged. There was lucent skin surrounding the distal aspect of the intramedullary rod with loosening. Erosion of the distal fibula in the area of ulceration. Suspicious for osteomyelitis as a result of the examination placement by surgery of new antibiotic beads in the lateral aspect of the ankle were made. A PICC line was introduced into the lungs to treat the vascular congestion. The Claimant received respiratory therapy daily. A surgery for drainage of right lower limb and ankle was performed due to osteomyelitis. The Claimant's previous rear foot and ankle fusion was for posttraumatic arthritis.

During this hospitalization, the Claimant also experience shortness of breath and chest pain. At the time, the diagnosis was also bilateral pulmonary embolism. At discharge the Claimant was given follow-up to continue cultures to determine whether the infection of the bone was continuing. On final discharge, the primary diagnosis was chronic osteomyelitis of the right ankle, acute bilateral pulmonary embolism, acute kidney injury and anemia. Secondary diagnosis was morbid obesity and hyperlipidemia.

A consultative medical examination by an internist was conducted on May 6, 2013. The impression was right knee, leg and ankle injuries cut – status post fall and fractures. Left foot injury status post fall with surgery with no gross bony deformities or edema on today's examination. Carpal tunnel syndrome of right hand. Based on findings of the exam, the examinee does have the following limitations -- she may have difficulty with activities requiring repetitive hand movements and hand gripping; she may have difficulty with prolonged walking or climbing with right lower extremity.

A Medical Examination Report was completed by the Claimant's treating doctor on November 7, 2013. At that time, the diagnosis was ankle pain and ankle arthritis, pain with palpation to right ankle, noted decreased range of motion, right ankle and pain, difficulty walking and antalgic gait. The Claimant was noted as stable, and the following limitations expected to last more than 90 days were noted; the Claimant could not lift less than 10 pounds, could not use her right leg foot for operating foot controls, noting unable to bear weight to right leg, and foot pain and decreased range of motion of right, ankle open wound with exposed hardware in the right ankle. The Claimant at that time

was deemed unable to meet her needs in the home. After being seen that day, the Claimant was scheduled for wound surgery and debridement.

The Claimant was operated on and was seen postoperatively on September 5, 2013 after a procedure August 1, 2013 performed to treat her ulcerated wound. At the time, the Claimant was ambulating with a walker and wearing a posterior splint. She was also wearing a prescribed exigent bone stimulator. There was no range of motion in the ankle or subtalar joint.

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), was examined in light of the Claimant's ankle however the listing requirements were not met or supported by the available medical evidence as the Claimant was still able to ambulate. 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 do her laundry because she is unable to carry the laundry up and downstairs, and cannot walk up and down stairs due to her ongoing right ankle pain and weakness. Claimant could not walk more than a half block due to ankle pain and shortness of breath. She could stand for 2 to 3 minutes due to pain and needed to use a cane when standing. The Claimant could sit for 20 minutes but must elevate both legs or experiences spasms in both legs. The Claimant needs assistance showering and dressing and uses a shower chair. The Claimant also had swelling of the right ankle and foot when sitting and noted that her right ankle, previously broken, was fused. The Claimant testified she could not bend at the waist with use of her cane. The heaviest weight the Claimant could carry was 10 pounds. The Claimant could not squat or touch her toes. The Claimant has assistance getting her groceries. The Claimant can no longer drive due to her right foot and ankle pain and swelling. The Claimant's testimony was deemed credible. The consultative examiner found there were limitations and imposed limitations on standing as well as walking, and found an assistive device was necessary.

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 working as a case manager and has worked in detention centers for young adults, as a case manager for adult foster care patients, and managing ex-offenders as well as a

family social worker. Most of these positions required the Claimant to do field work 4 days per week. Most of her jobs required that she use transportation and home visits.

The Claimant's work was semi-skilled and, therefore, transferable; however, the Claimant can no longer do her past relevant work as she can no longer drive, stand, walk the necessary distances to make home calls. 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 thus is considered a person approaching advanced age for MA-P purposes. The Claimant has a high school education and a master's degree in social work, and has been restricted with limitations on standing and walking and carrying. 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, including two Medical Examination Reports by the Claimant's ongoing since 2007 treating doctor, and the objective medical evidence, including the consultative examiner's impression and imposition of limitations, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered and that the Claimant is not capable of sedentary work as she cannot meet the required standing or lifting requirements for sedentary work in doing so, it is found that the combination of the Claimant's physical impairments in totality and her obesity and BMI of 37 have a major impact on her ability to perform even basic work activities. The Claimant also has been determined to required assistance with activities of daily living due to her physical condition and impairments.

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 credible 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.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, she is found disabled for purposes of SDA benefit program.

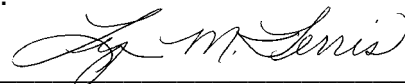
DECISION AND ORDER

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

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 for MA-P and SDA, dated July 30, 2013, and retro application if any, if not done previously, to determine Claimant’s non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for SDA benefits the Claimant was otherwise entitled to receive in accordance with Department policy.
3. A review of this case shall be set for July 2015.



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

Date Signed: July 24, 2014

Date Mailed: July 25, 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:

