

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201413377  
Issue No(s): 4009  
Case No.: [REDACTED]  
Hearing Date: April 3, 2014  
County: Wayne (55)

**ADMINISTRATIVE LAW JUDGE:** Robert J. Chavez

**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 3, 2014, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], and [REDACTED], Hearings Facilitator.

**ISSUE**

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for SDA on September 10, 2013.
2. Claimant is 33 years old.
3. Claimant has a high school education.
4. Claimant has a past work history consisting of fast food cashier and warehouse work.
5. These jobs were performed at the heavy and light levels.

6. These cashier job required standing, bending and lifting, the ability to follow simple instructions, and was not performed in a significantly different manner than as usually defined.
7. Claimant has a medical history consisting of seizures, low back pain, and bipolar disorder.
8. Claimant has not had a seizure, per testimony, since September, 2013, and is not currently taking medications for this impairment.
9. Claimant is not currently receiving treatment for bipolar disorder.
10. A psychological exam from July 15, 2013 noted that claimant can follow, retain, and understand simple instructions.
11. An MRI of claimant's thoracic spine conducted in July, 2013 noted normal alignment, no signal abnormalities, no disc herniation or stenosis, no abnormalities with the neural foramina, and unremarkable soft tissues.
12. An MRI of the lumbar spine, conducted in July, 2013, noted normal alignment, no signal abnormalities, no disc herniation or stenosis, and mild facet arthropathy without significant foraminal stenosis.
13. An independent examination in April, 2014 found normal range of motion, normal reflexes, normal motor functions, no need for ambulatory assistance, no spinal deformity, normal reflexes, no muscle atrophy, and normal ambulation.
14. Claimant was able to squat and bend to 70% of the distance and had normal grip strength.
15. Claimant submitted a treating source opinion limiting claimant to less than sedentary restrictions, but the treating source opinion was not accompanied by supporting medical evidence.
16. Claimant can perform all activities of daily living.
17. On October 18, 2013, the Medical review team denied SDA, stating that claimant could perform other work.
18. On October 24, 2013, claimant was sent a notice of case action denying SDA.
19. On November 12, 2013, claimant requested a hearing on the SDA denial.
20. On January 17, 2013, the State Hearing Review Team denied SDA, stating that claimant could perform other work.
21. On April 3, 2014, an administrative hearing was held.

22. The record was extended to allow for the submission of new evidence, more specifically, an updated MRI; no evidence was submitted to show that the MRI results had significantly changed since 2013.

### **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 Supplemental Security Income (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.

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a). 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

This is determined by a five-step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

For the purposes of the SDA program, that durational requirement is shortened to 90 days. BEM 261.

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA

amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2013 is \$1,740. For non-blind individuals, the monthly SGA amount for 2013 is \$1040.

In the current case, claimant has testified that they are not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 90 days or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6<sup>th</sup> Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of bipolar disorder and back pain, which has more than a minimal effect on claimant's work related abilities. Independent medical examinations confirmed that claimant has deficits in understanding more complex instructions. An independent exam showed that claimant had mild limitations in bending and stooping. Therefore, claimant passes the second step of the sequential evaluation.

Claimant also reported seizures; however, as claimant testified that she is not receiving treatment for seizures, and has not had a seizure since September, 2013, the undersigned holds that claimant's impairment does not have more than a minimal effect on claimant's ability to perform work related activities, and is thus not a severe impairment.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 12.00 (Mental) and 1.00 (Musculoskeletal). Claimant's condition does not meet the requirements contained in the listing. Claimant does not have evidence of impairments that significantly limit daily activities, social functioning, or memory. There is no evidence of muscle atrophy, nerve root impingement, abnormal reflexes, or an inability to ambulate effectively. The medical evidence is insufficient to consider these listings. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) the individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is

made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category. An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptom, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, claimant testifies to anxiety and bipolar disorder, as well as back pain.

Claimant testified to an inability to lift over 10 pounds, difficulty standing for extended lengths of time, and difficulty walking over 20 steps, due to back pain. Claimant submitted a treating source opinion that listed less than sedentary restrictions with regards to claimant's back disorder. However, claimant's back pain allegations are not supported by the medical record. Even though claimant submitted a treating source opinion limiting claimant to less than sedentary restrictions, there are no medical records in the file that support this opinion. MRI's are normal, except for mild facet arthropathy in the lumbar spine, without significant neural foraminal stenosis. An independent exam noted normal range of motion, and mostly normal findings with the exception of mild limitations in bending and crouching. Claimant admits to no specialized treatment, and does not require any assistive devices. Claimant did not submit any medical records relating to back pain or other back disorders and only receives care from a primary care physician.

As such, the treating source opinion was disregarded as unsupported by the objective medical record. The undersigned does not find claimant credible with regard to her testimony of limiting symptoms from her back pain, as her testimony is not supported by the objective medical record.

With regard to the anxiety and bipolar disorder, claimant has alleged difficulty sleeping, auditory hallucinations, and difficulties being around people. Independent and treating medical reports note that claimant has an ability to follow, understand, and retain simple instructions. Claimant is orientated to time, place, and person. No findings have been made with regard to an inability to be around people, other than claimant's self-report that she "doesn't get along well with others". Claimant is not currently receiving treatment for her mental health allegations.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering functions that require following and retaining complex instructions. Claimant has no limitations with reaching and pulling, and no manipulative limitations. Claimant has mild postural limitations (e.g. stooping, bending, and crouching) as stated above, and no visual limitations or communicative (hearing, speaking) limitations. Claimant has very mild limitations with standing, walking, or the use of their legs. Claimant may require supervision.

Claimant testified to only being able to stand for short periods and walk short distances; the Administrative Law Judge did not find this testimony credible in light of the medical record.

Claimant's PRW includes work as a fast food cashier. This job, as typically performed and described by the claimant, required mild bending and stooping, standing for at least 6 hours in an 8-hour day, and walking short distances. This job did require some lifting, up to 20 pounds. This job did not require advanced judgment, complex instructions, or abstract thinking.

Claimant's medical record as a whole does not show that claimant has a physical impairment that would prevent claimant from performing this past work. Claimant testified that claimant could not stand for the periods required for this job, or lift the weights required with this job; however, as stated above, the undersigned does not find this testimony to be supported by the objective medical record.

The medical record shows that claimant is physically and mentally capable of performing their past relevant work. Therefore, claimant possesses the residual functional capacity to perform their prior relevant work.

Therefore, given the functional requirements as stated by claimant (which is consistent with how these jobs are typically performed) for these jobs, and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does retain the capacity to perform their past relevant work.

As claimant retains the capacity to perform past relevant work, the undersigned must find that claimant does not meet the requirements to be found medically disabled. As claimant does not meet the requirements to be found medically disabled, the undersigned holds that the Department was correct when claimant was not disabled for the purposes of the SDA program.

As claimant has been found not disabled at Step 4, no further analysis is required.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant  disabled  not disabled for purposes of the MA and/or SDA benefit program.

**DECISION AND ORDER**

Accordingly, the Department's determination is  AFFIRMED  REVERSED.



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**Robert J. Chavez**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: August 22, 2014

Date Mailed: August 22, 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

RJC/tm

cc:

