

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013 42225
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 17, 2013
County: Oakland DHS (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on July 17, 2013, from Pontiac, Michigan. Participants on behalf of Claimant included the Claimant. [REDACTED], the Claimant's Authorized Hearing Representative, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Specialist.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

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

1. On April 12, 2013, Claimant applied for MA-P and retro MA-P for January 2013.
2. On March 20, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated March 16, 2013 denying the Claimant's MA-P application. Exhibit 1

4. On March 26, 2013, Claimant's AHR submitted to the Department a timely hearing request.
5. On May 24, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. ALJ Leventer issued an Interim Order on July 22, 2013 requesting additional hospital records and a DHS 49 from the Claimant's doctor. These records were not received.
7. An Interim Order was issued on December 2, 2013, at which time additional medical evidence provided by the Claimant's AHR was submitted to the State Hearing Review Team.
8. On January 22, 2014, the State Hearing Review Team denied Claimant's request and found Claimant not disabled.
9. Claimant, at the time of the hearing, was 49 years old with a birth date of [REDACTED]; the Claimant will be 50 years of age on [REDACTED]. Claimant height was 5 '9" and weighed 260 pounds.
10. Claimant completed 10th grade and had a certificate for direct care worker.
11. Claimant's prior work was as a direct care worker caring for disabled group home residents.
12. The Claimant has not alleged any mental disabling impairments.
13. Claimant alleges physical disabling impairments due to deep vein thrombosis and severe low back pain. The Claimant also has pain due to the placement of a filter to prevent blood clots from traveling post insertion.
14. 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 deep vein thrombosis and severe low back pain. The Claimant also has pain due to the placement of an IVC filter to prevent blood clots from traveling.

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.

On October 13, 2012, the Claimant was seen in the emergency department due to severe spasm on the right side of her neck. The clinical impression at the time of the admission was myofascial strain. On examination, the Claimant's right grip strength was weaker than on the left. The Claimant was given pain medication and was discharged home.

The Claimant was seen in the emergency room on December 5, 2012 complaining of radiating pain from her stomach into the left side and her back. At the time, the Claimant was in extreme pain and walked with a very slow gait hunched over. At the time of the admission, the Claimant weighed 250 pounds and had a BMI of 36.9. The examination notes that the Claimant was not comfortable sitting. While in the emergency room, the Claimant was given a chest x-ray which determined that there was no active disease in her chest or evidence of obstruction or free air. The Claimant was discharged home with pain medication.

The Claimant was seen and admitted to the hospital on January 17, 2013 due to left sided buttock and thigh pain. On presentation, she had swelling of left lower extremity from foot and ankle all the way to side with tenderness to palpation and swelling in the right lower extremity. At the time of the admission, the impression was deep venous thrombosis and obesity. A venous Doppler was performed which was confirming of a diagnosis of acute to subacute deep vein thrombosis throughout the venous system of the left lower extremity. Chronic back pain was also noted. The Claimant was discharged four days later with left lower extremity tenderness. The patient was discharged home with a follow-up appointment.

On February 18, 2013, the Claimant was admitted to the hospital for a 10 day stay. The admission diagnosis was acute deep venous thrombosis of the left leg. Discharge diagnosis was extensive deep venous thrombosis of left leg with bilateral non-obstructive pulmonary emboli, status post inferior vena cava filter. Bronchial asthma, mild, intermittent and anemia. Radiological reports noted and confirmed by venous Doppler a left lower extremity revealing extensive deep vein thrombosis of left leg

extending from left common femoral to upper calf. Clot is occlusive in all these veins excepting popliteal vein. Superficial veins appear patent. CT of the chest with contrast revealed bilateral pulmonary emboli, soft tissue density within the right infra hilar region, which could represent lymph node measuring 1.5 cm. Also noted was diffuse decreased attenuation of liver consistent with hepatocellular disease such as fatty infiltration. An IPC filter placement was seen on the CT scan. A CT scan of the abdomen and pelvis revealed no definite acute process within the abdomen or pelvis. An IVC filter placement was performed on February 20, 2013. After placement of the filter, the Claimant was put on Coumadin and her levels became therapeutic. Further, after placement of the filter, Claimant complained of sharp pain in the right groin radiating to her buttock. The pain was very severe without swelling or hematoma. At the time of the admission, the Claimant's condition was noted as guarded.

On March 4, 2013, the Claimant was seen for an office follow-up visit. At the time of the visit, the Claimant's notes indicate that the patient feels well known symptoms. Main issue with compliance is financial, due to lack of insurance. The Claimant was seen again on March 23, 2013, and compliance was noted with medications and sharp pain at the right groin IVC filter site. Claimant was seen on April 1, 2013 for an office visit and continued to complain of sharp pain in the right groin area at the femoral puncture site cents IVC filter placement.

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. Section 4.11- Chronic venous insufficiency of a lower extremity with incompetency or obstruction of the deep venous, and Section 4.12- peripheral arterial disease; however, the listing requirements were not met or supported by the available medical evidence, as necessary testing date required to meet the listings were not demonstrated by the medical evidence available. 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 to being unable to stand for more than 10 to 15 minutes, and cannot lift anything more than a few pounds due to back pain and pain from the IVC filter in her right abdomen. The Claimant experiences pain with walking and cannot walk even a half block. In order to do dishes at her home she must sit on a stool, as having to bend over at the sink is painful. She requires assistance from her daughter to maintain her house and must use a motorized cart to grocery shop which is loaded by her daughter who assists her. The Claimant cannot climb stairs and has difficulty putting her shoes on due to back pain, and groin and buttock radiating pain from the IVC filter. The Claimant cannot perform a squat. The Claimant can sit for only 15 to 20

minutes and then must move due to pain. The Claimant testified she could carry no more than a gallon of milk (8 pounds).

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 direct care worker providing total care to group home residents. The Claimant was on her feet in this job 7 out of an 8 hour shift, had to lift patients weighing up to 200 pounds and bathe and feed and dress her patients. The Claimant's work was semi-skilled and is not transferable due to the fact the Claimant has a 10th grade education. 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 49 years old and was one month away from turning 50 years of age, and thus is considered a person approaching advanced age for MA-P purposes. The Claimant has a 10th grade education and has been restricted with limitations on standing and walking and sitting less than 6 hours in an 8 hour workday. 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 limitations presented and the medical evidence presented, including two hospitalizations and history of deep vein thrombosis and the objective medical evidence, 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, sitting or lifting requirements for sedentary work. In doing

so, it is found that the combination of the Claimant's physical impairments in totality have a major impact on her ability to perform even basic work activities. The Claimant also has been determined to require assistance with activities of daily living due to her physical condition and impairments.

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 April 12, 2013 and retro application for January 2013, if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for September 2015.



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

Date Signed: September 3, 2014

Date Mailed: September 3, 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:

