

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-27088
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: June 25, 2014
County: Macomb (50-20)

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 June 25, 2014, from, Detroit Michigan. Participants on behalf of Claimant included Claimant. A [REDACTED] interpreter for [REDACTED] by the name of [REDACTED], also appeared as an interpreter for the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearings Facilitator.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) benefit 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 November 15, 2013, Claimant applied for MA-P and SDA.
2. On January 17, 2014, the Medical Review Team denied Claimant's request. A notice of case action was issued on January 27, 2014.
3. On February 11, 2014, Claimant submitted to the Department a timely request for hearing.

4. On April 25, 2014, the State Hearing Review Team (SHRT) denied Claimant's request.
5. The SHRT again denied the Claimant's request on September 23, 2014.
6. Claimant is ■ years old.
7. Claimant completed education in Serbia of 12 years. The Claimant speaks only a little English and does not write English.
8. Claimant has employment experience as a housekeeper for a furniture store, factory work including leather manufacturing, and building windows.
9. Claimant's limitations have lasted for 12 months or more.
10. Claimant suffers from cervical neck pain and pain in her arm and elbow, diabetes, high blood pressure, high cholesterol and headaches and dizziness.
11. The Claimant suffers from depression.
12. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping and carrying.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant’s impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant’s residual functional capacity to do relevant work.

In the present case, the Claimant has been diagnosed with depression and has been seen a few times by a psychiatrist, who completed an examination and Mental Residual Functional Capacity Assessment on April 29, 2014. The doctor noted that Claimant suffered from a closed head injury and lost consciousness, and has developed

depression. This affects her ability to function in the capacity she used to. The doctor noted several marked limitations which included the ability to maintain concentration, ability to sustain an ordinary routine without supervision, ability to work in close proximity to others without being distracted by them, the ability to maintain a routine as scheduled and attendance within customary tolerances, ability to accept instructions and respond appropriately to supervisors, ability to get along with co-workers or peers without distracting others or exhibiting behavioral extremes, ability to respond to changes in the workplace setting, ability to travel in unfamiliar places, and ability to set reasonable goals and make plans independent of others. The doctor felt the Claimant needed assistance with managing her funds. The doctor also evaluated the Claimant as not significantly limited in carrying out of detailed instructions, and was moderately limited in her ability to remember locations and work-like procedures, and understand one or two step instructions. The Claimant has not treated for her depression and medications are as prescribed by her PCP.

The Claimant also underwent a consultative psych-exam on March 17, 2014. The examiner utilized the language line, but noted Claimant answered the questions without the interpreter. The examiner found the Claimant not truthful about being able to speak or understand English. The Claimant's insight and problem solving skills were evaluated as poor. The examiner also found affect was inappropriate to circumstances and that Claimant was irritable and would burst into tears. The Claimant was diagnosed with persistent Depressive Disorder and Generalized Anxiety Disorder. Claimant did not appear to have difficulty carrying out one-step instructions. A referral to see a psychiatrist with a medication review is recommended.

Claimant suffers from cervical neck pain and pain in her arm and elbow, diabetes, high blood pressure, high cholesterol and headaches and dizziness. The following summarizes the medical evidence in that regard.

The consultative internal medicine examination was performed on February 24, 2014. The impression was chronic neck and back pain. Ranges of motion documented. Diabetes requiring insulin. Hypertensions with medication for management. Hyperlipidemia managed with medication, left shoulder arthralgia, possible arthritic, range of motion as documented and suggested follow up with PCP. Medical Source Statement: based upon findings on my exam today, the examinee does have the following limitations--she is on medication, so should eat meals at regular intervals, may need to alternate standing and sitting, may have some difficulty with bending, stooping and squatting. The exam testing demonstrated decreased range of motion in cervical, lumbar spines and left shoulder.

In December 2013, after a work injury, the Claimant was returned to work with the following restrictions--no lifting over 5 pounds, no prolonged standing and /or walking longer than one hour, no pushing or pulling of 10 pounds of force, and no reaching above shoulders.

The Medical records reviewed indicate that diabetes onset began in 2004, and Claimant has had difficulty from time to time regulating her diabetes. The Claimant was also diagnosed with hyper parathyroid. The Claimant underwent a procedure for the removal of the adenoma behind the right para thyroid. A stress test in 2010 was normal with no induced ischemia, and normal left ventricular wall motion and ejection fraction. A CT of brain in 2010 demonstrated no acute intracranial pathology. A parathyroid adenoma was diagnosed in 2009 after a CT. The Claimant was hospitalized in 2010 for shaking and chest pain at work, and after testing was determined to have no ischemia. CT of brain showed no acute intracranial process. The Claimant was seen again with similar symptoms on June 29, 2010.

The Claimant was seen by her doctor in November 2013, for back pain in lower back and bilateral shoulder pain, with paresthesias to arms and hands. The Claimant was prescribed pain medication. In May 2013, Claimant was seen for dizziness and frequent daily headaches.

Claimant was seen by an endocrinologist on September 11, 2013. The diagnosis was diabetes mellitus, hyperparathyroidism, and thyroid nodule and the doctor noted the patient was stable. In November 2012, the Claimant had an MRI of the brain due to complaints of neck and shoulder pain and headache, with her head being totally numb to sensations, with dizziness and pre syncope. At this examination, the patient's symptomologies are not reflective on the neurological examination, but due to the persistence of the symptomologies, the doctor continued the Claimant on neurotin.

A consult with a neurologist on October 4, 2012, due to headaches and numbness since head injury at work when a 10 pound box fell on her head. The headaches are noted to wake patient from sleep and cause dizziness, neck pains and gait disturbance. The comment noted that patient's symptomatology reflects a neuropathic pain syndrome affecting the vertex scalp regions. The Claimant was placed on Neurontin 200mg, three times daily.

The Claimant was seen in January 2012 with frontal headache, as well as tenderness over the scalp region of the vertex, along with dizziness and a sensation of falling when bending over, with neck pain. The comment after examination noted cerebral concussion, post traumatic headache syndrome with chronic daily headaches with paresthesias of upper extremities, possibly being aggravated in relationship to her prior cervical surgery at C5-C6 fusion.

An MRI of cervical spine was performed January 26, 2012. The impression was postoperative changes, convex scoliosis and minor mal alignment with disc and facet disease as detailed. C4-C-5 level mild acquired right forminal stenosis; C5-C6 level status post discectomy fusion without spinal canal stenosis. Mild left forminal stenosis; C6-C7 level minor non-compressive spondylosis. On January 31, 2012, the Claimant was evaluated by the neurologist who found her status stable and static with no significant objective neurological findings and returned the Claimant to work

Claimant testified to the following symptoms and abilities: walking too long leads to foginess. The Claimant could stand for 20 minutes, and then experiences pain in lower back. The Claimant can sit 30 minutes and walk one block. She can squat part way with pain and has some difficulty with bending at the waist. The Claimant also testified that she could not carry any significant weight. Claimant's testimony regarding the severity of her symptoms and the restrictions on her ability to perform basic activities was found credible.

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 housekeeper for a furniture store, factory work including leather manufacturing, and building windows. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e). All the positions require that the Claimant be on her feet most of the day and she is required to lift and push heavy objects in her furniture housekeeping cleaning job.

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).

See *Felton v DSS* 161 Mich App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 732 F2d 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the Claimant has the residual function capacity for SGA.

This Administrative Law Judge finds that Claimant has the residual functional capacity to perform work at no more than a sedentary work level.

Claimant is an individual of advanced age. 20 CFR 416.963. Claimant has a high school equivalent education, but does not speak English well and does not write English. 20 CFR 416.964. Claimant's previous work was unskilled, therefore, transferability is not an issue. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table I, Rule 201.04, Claimant is determined to be disabled for purposes of the Medical Assistance program. As Claimant is found disabled for the MA-P program she is also deemed disabled for SDA program.

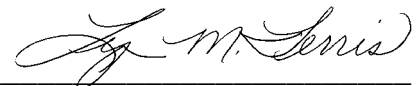
DECISION AND ORDER

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 shall process the Claimant's November 15, 2013 application and determine non-medical eligibility.
2. The Department shall issue an SDA supplement to the Claimant, if otherwise eligible in accordance with Department policy.
3. A review of this case shall be conducted in October 2015.



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

Date Signed: October 21, 2014

Date Mailed: October 21, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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.

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The party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

JWO/pf

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.