

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001501
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 13, 2014
County: WAYNE-19 (INKSTER)

ADMINISTRATIVE LAW JUDGE: Lynn 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 three way telephone hearing was held on August 13, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and a witness, [REDACTED]. [REDACTED] of [REDACTED], the Claimant's Authorized Hearing Representative, also appeared. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker.

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. On November 26, 2013, Claimant applied for MA-P and retro MA-P to October 2013.
2. On January 23, 2014, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated February 7, 2014, denying the Claimant's MA-P application.
4. On, April 25, 2014, Claimant's AHR submitted to the Department a timely hearing request.

5. On June 27, 2014, the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request.
6. An Interim Order was issued on August 13, 2014, and extended on September 26, 2014, ordering the Claimant to obtain an updated DHS 49 from her doctors.
7. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED]. Claimant height was 5’ 3” and weighed 175 pounds.
8. Claimant completed high school.
9. Claimant’s prior work experience was working in a bowling center tending bar and waitressing, as well as cashiering. The Claimant was required to stand most of the day and lift between 10 and 20 pounds of various food products and alcohol products.
10. The Claimant has not alleged mental disabling impairments.
11. Claimant alleges physical disabling impairments due to diabetes type II, congestive heart failure, coronary artery disease, acute respiratory failure, diabetes, and COPD with chronic shortness of breath and dizziness. The Claimant also has swelling in her legs and feet with chest pains daily.
12. 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 diabetes type II, coronary artery disease acute respiratory failure diabetes and COPD with chronic shortness of breath and dizziness. The Claimant also has swelling in her legs and feet with chest pains daily.

Claimant has not alleged any mental disabling impairments.

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

A Medical Examination Report was completed on September 22, 2014, by the Claimant's treating primary care physician and Doctor of Internal Medicine. The diagnosis was coronary artery disease, diabetes type II, shortness of breath, fatigue, chronic bronchitis and chronic pain. At the time of the examination, the Claimant was rated as stable and her limitations were expected to last more than 90 days. Limitations were imposed. The Claimant is capable of occasionally lifting less than 10 pounds, standing and/or walking less than two hours in an eight-hour workday, and sitting less than six hours in an eight-hour workday. Assistive devices were deemed unnecessary. The Claimant was unable to perform simple grasping, reaching, pushing pulling, and fine manipulating with either hand. The Claimant could not operate foot controls with either foot/leg. The findings which supported the limitations were coronary artery disease, shortness of breath, extreme fatigue, dizziness, and chronic bronchitis. No mental limitations were noted, and the Doctor indicated the Claimant could meet her needs in the home.

Claimant was hospitalized on October 30, 2013. At the time, she suffered congestive heart failure, coronary artery disease cardiogenic shock, and acute respiratory failure, with also a diagnosis of diabetes type II and COPD. At the time, the Claimant had a cardiac catheterization and stenting and suffered cardiac arrest. At the time of this admission, the Claimant had extensive multifocal infiltrative changes throughout both lungs and pneumonia, pulmonary edema, and pulmonary hemorrhage were considered. X-rays of the chest were also taken, noting diffuse congestion and infiltrates have mildly worsened; continued short-term follow-up imaging recommended and unchanged borderline cardiomegaly. The Claimant was on a respirator due to her cardiogenic shock while hospitalized. The diagnosis was cardiac arrest, secondary to acute coronary syndrome, acute respiratory failure with ventilator. At the time of her catheterization, the Claimant had a complete occlusion of the left circumflex in right coronary. The Claimant then underwent a second cardiac catheterization, all coronaries were opened at that time. At the time of the Claimant's congestive heart failure, the Claimant's ejection fraction was 30 to 35%.

In testing performed in September 2014, the Claimant's ejection fraction is about 50% on testing. A note diastolic dysfunction type III of the left ventricle was noted. The Claimant's cardiologist, who has treated her since her hospitalization, completed a medical examination report on December 12, 2013. At the time, the diagnosis was coronary artery disease post stent, COPD, diabetes mellitus, and cardiac arrest. The Claimant's condition was stable and limitations which were expected to last more than 90 days were imposed. The Claimant could frequently lift less than 10 pounds and occasionally 10 pounds. The Claimant could stand and/or walk at least two hours in an eight-hour workday. No restrictions on sitting were imposed. The Claimant could use her hands arms fully with no restrictions, and both of her feet and legs. The clinical medical findings were strength limitations, weakness and low ejection fraction.

On April 13, 2014, the Claimant was seen in the emergency room due to developed coughing, with mild difficulty breathing with history of COPD. Neck pain also was noted. On examination, the pain on palpation was more towards left side history of torticollis. X-rays taken at the time of her lungs and pleural spaces were clear.

A consultative medical examination was conducted on March 21, 2014. The conclusion of the examiner was that the patient, a ■-year-old female, noted having intermittent chest pain for the past week. The exam was not particularly useful; it concludes the patient appears to be in no acute distress.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and has not worked since October 2013, when she had her heart attack 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 4.02 Chronic Heart Failure was examined in light of the Claimant's congestive heart failure; however, it is determined that the Claimant's condition does not meet the requirements of the listing, as the ejection fraction of 30% is not met. 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 laundry because she is unable to carry the laundry basket and can only climb three stairs at a time due to shortness of breath. Claimant cannot vacuum due to shortness of breath, and does only very light sweeping and dusting for short periods. Claimant could walk a half block, could stand for 10 minutes, and could sit for 30 minutes. The Claimant's feet hurt when standing too long, and she experiences shortness of breath. The Claimant could carry 5 pounds. The Claimant could not perform a squat. The Claimant could tie her shoes but could not touch her toes. The Claimant's level of pain without medications is between an 8-9, and with pain medications, a 5-6, as a result of swelling in her feet and legs and chest pain. The

Claimant's doctor also found there were limitations, and imposed limitations on sitting and standing, as well as walking, carrying and lifting as outlined above.

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 prior work experience was employment working in a bowling center, tending bar and waitressing, as well as cashiering. This job required Claimant to stand most of the day, and lift between 10 or 20 pounds frequently. At the hearing, the Claimant indicated she thought she could no longer do the job because of the standing and lifting requirements, and her limitation on walking.

The Claimant's past work was unskilled. 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 due to the standing requirements of her past work and lifting requirements which also can no longer be performed. Thus, a Step 5 analysis is required. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying

articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience, is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 56 years old and thus is considered a person of advanced age for MA-P purposes. The Claimant has a high school education. Claimant has been restricted with limitations on standing and walking less than two hours in an eight-hour workday, lifting occasionally less than 10 pounds, and sitting less than six hours in an eight-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 medical evidence presented, and the objective medical evidence, particularly the medical treatment records and the evaluations done by the Claimant's doctors, as well as imposition of limitations imposed by both her doctors which place the Claimant at sedentary and less than sedentary, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered.

The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physician that completed the DHS 49 that places Claimant at less than sedentary. In doing so, it is found that the Claimant's physical impairments have a major impact on her ability to perform even 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). It is also noted that the Claimant would be found disabled at the sedentary capacity level as well pursuant to Rule 201.04 based upon her cardiologist's evaluation. After a 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

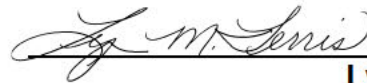
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled.

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 November 26, 2013 and retro application to October 2013, if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for November 2015.



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

Date Signed: **11/18/2014**
Date Mailed: **11/18/2014**
LMF/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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.

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 48909-8139

cc:

