

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002614
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 03, 2014
County: OAKLAND-4

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, an in person hearing was held on September 3, 2014 from Pontiac, Michigan. Participants on behalf of Claimant included the Claimant. [REDACTED], the Claimant's Authorized Hearing Representative, (AHR) appeared on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

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 upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On January 15, 2014, Claimant applied for MA-P and retro MA-P to October 2013.
2. On February 6, 2014, the Medical Review Team denied Claimant's request.

3. The Department sent the Claimant's AHR the Notice of Case Action dated February 13, 2014 denying the Claimant's MA-P application.
4. On, May 7, 2014, Claimant's AHR submitted to the Department a timely hearing request.
5. On June 3, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on September 4, 2014 ordering the Claimant to obtain an updated DHS 49 from her doctors.
7. Claimant at the time of the hearing was 46 years old with a birth date of [REDACTED]. Claimant height was 5' 6" and weighed 147 pounds.
8. Claimant completed the 11th grade.
9. Claimant's prior work experience was performing factory assembly work, cashiering at a fast food restaurant.
10. The Claimant has alleged mental disabling impairments due to schizophrenia, depression and anxiety. The Claimant has received outpatient treatment for two years.
11. Claimant alleges physical disabling impairments due to peripheral neuropathy, diabetes, asthma, and chronic heart disease with coronary artery disease.
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 as (either the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Claimant has the residual functional capacity to do his/her past relevant work, then the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

The Claimant has alleged mental disabling impairments due to schizophrenia, depression and anxiety. The Claimant has received outpatient treatment for two years.

Claimant alleges physical disabling impairments due to peripheral neuropathy, diabetes, asthma, and chronic heart disease with coronary artery disease.

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

The Claimant was examined by a Podiatric doctor on September 10, 2014. The diagnosis was Neuroma and planter fasciitis. The following limitations were imposed which were expected to last more than 90 days. The Claimant could frequently lift less than 10 pounds and occasionally 10 pounds. The Claimant could stand or walk less than two hours in an eight-hour workday, and sit less than six hours in an eight-hour workday. There were no restrictions placed on the Claimant's ability to use her hands/arms or feet/legs. The Claimant was capable of meeting her needs in her home.

The Claimant was seen by a family practice Doctor on September 18, 2014. At that time, the diagnosis was coronary artery disease, depression, asthma, hypertension, diabetes mellitus and chronic back pain. At the examination, the Claimant's condition was noted as deteriorating. The Claimant was given limitations, including occasionally lifting less than 10 pounds and standing and/or walking less than two hours in an eight-hour workday. The Claimant was able to perform simple grasping and fine manipulating with her hands or arms, but was limited as regards reaching and pushing/pulling. The Claimant had full use of her feet/legs without limitation.

The Claimant was seen at a free clinic on December 12, 2013, at which time she was diagnosed with diabetes, which was out of control due to non-use of stabilization and running out of the prescribed drugs for this condition. At the time, she reported lightheadedness, numbness, and tingling in pain in her toes/feet. The Claimant reported throbbing pain in her knees due to a fall. Claimant was seen again by the same Doctor on February 27, 2014, at which time peripheral neuropathy was diagnosed.

The Claimant was seen at the hospital and admitted for a one-day stay on October 25, 2013 due to radiating chest pains for approximately a couple of weeks. The Claimant also had hyperglycemia. The Claimant was discharged in stable condition after testing. The admit note indicates Claimant had not taken her medications for a year due to no insurance. Polysubstance abuse was noted at the time. A discussion regarding cocaine and its association with sudden cardiac death was also noted. The discharge diagnosis was acute chest pain, diabetes mellitus, dyslipidemia, hypotension and

tobacco dependence. The Claimant was given a stress test and an echocardiogram while hospitalized. The echocardiogram revealed a preserved ejection fraction is 45-50% with mild valvular dysfunction, with tricuspid regurgitation and mitral regurgitation. The Claimant's stress test was negative. Claimant was discharged with conservative medical management.

A psychiatric evaluation was performed on November 1, 2013. The Claimant was referred to [REDACTED]. At the time, the Claimant was being treated for symptoms of poor sleep, poor appetite, paranoia delusions that others were out to get her, anxiety, depression, auditory hallucinations (whispering voices), and seeing dead bodies as part of her visual hallucinations. In addition, physical complaints were noted which included headaches, back pain and involuntary muscle twitching. The Claimant's emotional difficulties began with the loss of her boyfriend of 25 years who died due to head injuries after engaging in a fight with another person. At the time of the evaluation, the Claimant was medicating her symptoms with alcohol, marijuana and crack cocaine. At the time of the examination, the Claimant's grooming was rated as poor, her attitude was cooperative and her mood was depressed. Claimant was also experiencing auditory hallucinations, as well as visual hallucinations and reported paranoia/persecutory delusions. Delusions were noted with regard to an evaluation of the Claimant's thought content and she requested that the door remain open during her psychiatric evaluation. Her impulse control judgment and risk assessment were rated as adequate. After the evaluation, psychotropic intervention was initiated. The Claimant was diagnosed as schizophrenic paranoid type (rule out), amphetamine, caffeine, cocaine use active and the GAF score was 50. The Claimant was prescribed [REDACTED].

A consultative medical examination was completed October 20, 2012. The exam notes indicate the patient was cooperative, with normal hearing and speech with no difficulty getting on and off the examination table, heel toe walking, squatting or hopping. Gait is normal. At the time, all range of motion was intact except for her left shoulder, with significant decreased abduction, adduction and forward elevation. The exam conclusion noted history of heart problems with single vessel bypass 12 years ago, with no problems since that time, with follow-up exams within normal limits. History of type II diabetes without neuropathy. Patient's blood sugars are uncontrolled. History of left arm pain was reported and patient appeared to have biceps tendonitis.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and her impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence, the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 1.02 Major Dysfunction of a Joint(s) due to any cause) Disorders of the Spine, 1.04 were examined in light of the Claimant's difficulty walking, knee and back pain; however, the listing requirements were not met or

supported by the available medical evidence as the Claimant was still able to ambulate. Listing 12.03, Schizophrenic, paranoid and other psychotic disorder and 12.04 Affective Disorders (Depression) were reviewed and considered, but ultimately it was determined that there was insufficient medical evidence due to a lack of a Mental Residual Functional Capacity Assessment from her treating psychiatrist. 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 uses a cane. Claimant also can vacuum, but experiences muscle spasm and pain in her legs. Claimant could walk 1-1/2 blocks, could stand an hour and could sit for a couple of hours. The Claimant could carry 10 pounds. The Claimant also testified to difficulty driving, as it was difficult to get in and out of the car. When grocery shopping, the Claimant must use a motorized cart. The Claimant could not squat. The Claimant's doctor also found there were limitations, and imposed limitations on sitting and standing, as well as walking, carrying and lifting.

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 factory assembly work and lifting parts weighing between 5 and 15 pounds, and cashiering in a fast food restaurant.

The Claimant was on her feet in these jobs she worked most of the day . The Claimant's work was unskilled and therefor transferability is not an issue. 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 her doctor's imposed lifting restrictions. 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 46 years old and thus is considered a younger individual for MA-P purposes. The Claimant has an 11th grade education and has been restricted with limitations on standing and walking less than 2 hours in an 8-hour workday, and lifting occasionally less than 10 pounds. 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 two evaluations done by the Claimant's doctors, as well as imposition of limitations, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered. Additionally, it is determined that Claimant's history of drug and alcohol abuse is determined to not be material, as the Claimant is in treatment for her psychiatric problems and has been in partial remission.

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 physicians that completed the DHS 49s. In addition, the Claimant's evaluation by her treating physician considered her condition to be deteriorating, and imposed limitations. It must be noted in this case that due to the Claimant's combination of physical impairments due to diabetes, coronary artery disease, peripheral neuropath and mental impairments which, include schizophrenia, depression and anxiety, and after a review of the entire record, including the Claimant's testimony and the objective medical evidence provided by the Claimant's treating physicians, who place the Claimant at less than sedentary, the total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical and mental 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). 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.

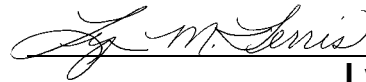
DECISION AND ORDER

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

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 January 15, 2014 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: **11/13/2014**

Date Mailed: **11/14/2014**

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:

