

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

IN THE MATTER OF:

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Reg. No.: 14-004369
Issue No.: 2009
Case No.: ██████████
Hearing Date: December 10, 2014
County: WAYNE-15 (GREYDALE)

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 December 10, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ the Claimant's Authorized Hearing Representative (AHR), also appeared. Two witnesses, ██████████ and ██████████ also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ 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 February 27, 2014, the Claimant submitted an application for public assistance seeking MA-P benefits and retroactive medical assistance.
2. On April 11, 2014, the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant/AHR of the MRT determination on April 17, 2014.

4. On June 16, 2014, the Department received the Claimant's AHR's written request for hearing.
5. On July 31, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleges physical disabling impairments, which include epilepsy with ongoing seizures, dizziness, involuntary shaking, memory loss and confusion, slurred speech and dementia.
7. The Claimant has alleged mental disabling impairments, and major depressive disorder.
8. At the time of hearing, the Claimant inaccurately reported that she was 60 years old, with an [REDACTED] birth date. The Claimant is 61 years of age and was 61 at the time of the hearing. Claimant is 5'6" in height; and weighed 110 pounds.
9. The Claimant completed 9th grade.
- 10.. The Claimant has no past relevant work experience.
- 11.The Claimant's impairments have lasted or are expected to last 12 months duration or more.

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.

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security

Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual

functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and therefore is not ineligible for disability benefits under Step 1.

As the Claimant has a profile of an individual of advanced age, defined as approaching retirement, SSR 82 – 63 must be considered. Pursuant to SSR 82-63, a finding of disability is directed where an individual can establish a severe impairment of any nature, is of advanced age, has limited educational process required for unskilled work, and has no work experience at all, or no recent and relevant work experience. The regulations and policy promulgated by the Social Security Administration (SSA) recognizes that a finding of inability to make a vocational adjustment to substantial work will be made provided his or her impairment(s) is severe, i.e. significantly limits his or her physical or mental capacity to perform basic work related functions. In cases involving individuals of advanced age, the only medical issue is the existence of a severe medically determinable impairment. The only vocational issues are advanced age, limited education or less, and absence of relevant work experience. With affirmative findings of fact, the conclusion would generally follow that the Claimant or beneficiary is under a disability. If all of the criteria of this medical – vocational profile are not met, the case must be decided on the basis of principles and definitions the regulations, giving consideration to the rules for specific case situations in Appendix 2. Thus, the analysis under Step 2 which follows will determine whether or not the Claimant has met the medical severity requirements.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

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

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In this case, voluminous medical records submitted by the Claimant's AHR establishes that the Claimant has a severe impairment. The Claimant's most recent hospitalization in November 2014 was for hypertension and high blood pressure. In October 2014, a petition for involuntary confinement was made due to the Claimant being found in a park sitting on the bench somewhat incoherent, disoriented and exhibiting signs of psychosis and dementia. Claimant has been hospitalized for breakthrough seizures, and due to her dementia and these seizures, her current relative caretaker credibly testified that she cannot be left alone.

The Claimant's most recent admission to the hospital in November 2014, was due to agitation and behavioral concerns. At the time, the Claimant was not taking psychiatric medication and was sedated in the emergency room. The Claimant's Dilantin levels were toxic with some indication that she may have been overmedicated, even though living in a group home. The Claimant was placed on Depakote for seizure control and behavior control. While hospitalized, the Claimant was examined by a psychiatrist with a diagnostic impression of dementia, with possibility of delirium, the GAF score was 10.

The Claimant was admitted to the hospital in October 2014 due to anxiety depression and thoughts of suicide and delusions. She was given Haldol for delusions while in the

emergency room. At the time of the admission, the Claimant was assessed as having problems with mood swings, irritability and agitation. At the time of her admission, the Claimant was psychiatrically assessed with the diagnosis of psychosis, Dilantin toxicity, weight loss and a GAF score of 25. At the time, the Claimant was unable to sign a voluntary petition for the assessment, prognosis was guarded and the Claimant was evaluated as requiring hospitalization due to her presenting mental condition and a recommendation for outpatient therapy.

The Claimant was admitted to the hospital in May of 2014 due to loss of consciousness, seizures versus arrhythmia with subsequent TIA and Syncope. Dilantin levels were sub therapeutic on admission. An abnormal ECG was also noted. The ECG on admission showed presence of left bundle branch block and possible left atrial enlargement. The discharge diagnosis was breakthrough seizures, medical noncompliance with Dilantin, electrolyte abnormality, and history of poly substance abuse. The Claimant was discharged back to her group home in stable condition after a three day stay. A CT of the Claimant's brain was essentially normal. The examining doctor noted mental limitations. The examiner also noted right-sided weakness, with history of chronic encephalopathy with baseline cognitive delay.

The Claimant underwent a consultative mental status examination in August 2014. The diagnosis was persistent depressive disorder, early onset, mild to moderate with intermittent major depressive episodes, with current episode. Prognosis was fair to guarded. The examiner also noted that the Claimant had a guardian who took care of her financial bills and noting mental difficulty, she is not capable of managing funds. During the exam, the examiner noted that the Claimant had poor insight of her overall medical condition and was crying profusely. It was difficult to understand and discern the things she was saying because she was quite labile. At the time of the exam, the Claimant reported that she had stopped drinking. During the exam, Claimant reported moods of feeling withdrawn, embarrassed, has difficulty with people and expressed feeling useless and without purpose. The Claimant presented with a disheveled appearance. This findings made by the examiner were found not supported by the exam notes and thus little if any weight was given to this medical evidence.

During the hearing, the undersigned personally observed the Claimant's lack of memory, forgetfulness, confusion and difficulty in speaking, oftentimes with slow responses which were difficult to understand.

Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant has credibly testified to the following limitations and abilities. The Claimant can walk approximately less than a few feet due to dizziness. The Claimant currently has a visiting nurse who assists her. The Claimant's walking is unsteady and she experiences muscle spasm after sitting. The Claimant cannot bend at the waist due to dizziness and needs assistance with bathing. The Claimant also credibly testified to no longer drinking alcohol.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities and which are deemed severe, thus Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

As a result of the findings that the Claimant has met the medical severity requirements and has factually established that Claimant is of advanced age (retirement) 61, has no past relevant work, and a ninth grade education, thus it is determined that pursuant to SSR 82 – 63 these Findings direct a finding of disability.

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 with regard to her major depressive disorder are found to have met the listing or its medical equivalent. In addition, the Claimant's medical records also support that Claimant has met the medical equivalent of Listing 12.02 Organic Mental Disorders and has satisfied 12.02 A and B. Thus no further analysis is required as Claimant is found disabled at Step 3 as well.

Further, based on review of the medical records, it is determined that drug and alcohol dependence and/or abuse is not material based on the Claimant's credible testimony, and the medical records being devoid of anything in terms of objective medical evidence or any testing or notes which would indicate the Claimant is still using alcohol.

Therefore, the Claimant is found disabled in accordance with this decision based on SSR 82 – 63, as well as the above referenced Listings.

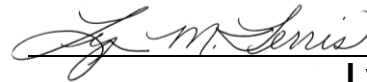
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of January 2014.

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 February 27, 2014 and retro application, if any, if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for December 2015.



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

Date Signed: **12/29/2014**

Date Mailed: **12/30/2014**

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:

[REDACTED]
[REDACTED]
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