

**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.: 14-005163
Issue No.: 2009
Case No.: ██████████
Hearing Date: October 29, 2014
County: WAYNE-35 (REDFORD)

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, a three-way hearing was held on October 29, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████, the Claimant's Authorized Hearing Representative, also appeared. Participants on behalf of the Department of Human Services (Department) included ██████████, Hearing Facilitator.

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 7, 2013, Claimant applied for MA-P and retro MA-P (October 2013).
2. On February 6, 2014, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated June 25, 2014 denying the Claimant's MA-P application.
4. On June 19, 2014, Claimant's AHR submitted to the Department a timely hearing request.
5. On July 14, 2014, the State Hearing Review Team issued a decision denying the Claimant's request for a finding of disability.

6. An Interim Order was issued on October 29, 2014 requesting additional medical evidence be provided by Claimant/AHR.
7. Claimant at the time of the hearing was 28 years of age with a [REDACTED] birth date. The Claimant was 5' 9" t tall and weighed 143.
8. Claimant completed high school and some college.
9. Claimant's prior employment was as a hip hop dance instructor working at a gym. At the time of the hearing the Claimant was not employed.
10. Claimant alleges physical impairments due to chronic skin infection in her left foot and numbness from the knee down with drop foot.
11. The Claimant has not alleged any mental disabling impairments as part of the application for MA-P.
12. Claimant's limitations have lasted for 12 months 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 impariment 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.

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. The Claimant was not currently engaging in substantial gainful activity at the time of the hearing and is not employed; thus, is not disqualified at Step 1. The Claimant's medical evidence referenced below also satisfies the requirement of severity of her impairment; thus, satisfying Step 2 of the required analysis.

Claimant alleges physical impairments due to chronic skin infection in her left foot and numbness from the knee down with drop foot.

The Claimant has not alleged any mental disabling impairments.

A summary of the medical evidence presented in this case follows.

On October 12, 2013, the Claimant was admitted for a 6 day stay due to pain and swelling in her left foot. The Claimant had foul yellow discharge with spontaneous wound opening. The wound measured 10X8 cm. The discharge diagnosis noted chronic neuropathy. On discharge the Claimant had MRSA abscess and cellulitis of left foot, heroin addiction, chronic pain, anemia of chronic disease, leukocytosis, anxiety and sleep disorder. On discharge Claimant was stable with wound VAC placed in left foot after surgery with mandatory follow up. The notes indicate that given size of the wound, patient will require long term care and a future determination how to close the wound.

The Claimant was seen again in the hospital on March 17, 2014 for wound infection to left lower extremity and was admitted for 4 days. Record notes long time wound vac for a prolonged period. The wound had odor, pus and purulence. Lower left extremity swelling, pain and cellulitis. The Claimant was admitted. The Claimant was treated for her wound and anxiety. The Claimant was discharged March 18, 2014 in stable but guarded condition. The Claimant was also restricted with weight bearing on left lower extremity. Notes indicate Claimant should stop using all drugs and smoking products. The notes indicate that based on vascular recommendations, she may need foot amputation. In light of her drug use and chronic wound infection, she is at risk for decompensation and future readmission.

In April 2014, her treating wound care physician noted treatment for chronic left foot infection, cellulitis, likely complicated by bone infection and may face amputation.

At the beginning of September 2014, the Claimant received physical therapy but per her physician, limited weight bearing to left lower extremity and no weight to left heel.

On September 9, 2014, the Claimant was admitted for 9 days with treatment for open wound left heel, as well as noted Bipolar, IVDA heroin, and endocarditis. Her pedal pulses were faint in left foot. The Claimant required assistance with bed mobility,

walking locomotion, dressing, eating, toileting, personal hygiene and bathing. The Claimant was admitted to [REDACTED] for 10 days.

On September 19, 2014, the Claimant was admitted to the hospital with complaints of fever and chills, noted picc line for antibiotics in July. Her active problems on admission were bacteremia, cellulitis, anemia, fungemia, osteomyelitis, and picc line infection. On examination she had an ulcer on her heel since October 2014, and no sensation at dorsum left foot and pain. The impression was chronic pain left lower extremity with neuropathic component and pain due to infectious process. The Claimant was given pain management new medication. The stay at this time was 2 days.

The Claimant was seen on September 28, 2014 for chronic foot infection with left leg pain and swelling and limited movement, with positive culture for 2 types of fungi and staphylococcus infection of centrally inserted catheter. On discharge the Claimant's condition was noted as fair. On September 30, 2014, the Claimant was admitted to [REDACTED] with noted mental illness, a picc line and limited/non-weight bearing on right and use of assistive device.

The Claimant also credibly testified to the following limitations. The Claimant at the time of the hearing used crutches and continued to have an open wound of the left heel. The Claimant could stand for 5 to 10 minutes with pain. In order to sit, the Claimant must keep her foot elevated. The Claimant could walk less than one half block. The Claimant needed assistance dressing and showering.

In light of the Claimant's testimony as regards her ongoing limitations and pain, with a continuing open wound on her left heel which persists, Listing 8.04 was reviewed and considered. The Listing requires:

8.04 Chronic infections of the skin or mucous membranes, with extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing treatment as prescribed.

Based upon the review of the Medical records presented, it is determined that the Claimant has met Listing 8.04 or the medical equivalent thereof, and thus is deemed disabled at Step 3 with no further analysis required as regards meeting the listing.

Sections 223 (d)(2)(C) and 1614 (a)(3)(J) of the Social Security Act ("Act") provide that a Claimant "shall not be considered to be disabled... If alcoholism or drug addiction... would be a contributing factor material to the determination that the individual is disabled." The issue which must be considered and determined is whether the Claimant would continue to be disabled if he or she stopped using drugs, which in this case is heroin. It must be determined whether drug addiction is material to the finding that in this case that the Claimant is disabled. In this case, the Claimant's medical records presented document IV heroin use throughout her treatment. It does not appear that any of her treatment while hospitalized involved treatment for addiction. A drug

addiction determination is required as there is medical evidence from an acceptable medical source that establishes that the Claimant has a substance use disorder and is disabled. In this case, the Claimant's heroin use is not her only impairment.

In light of the Claimant's documented ongoing IV drug use of heroin in some of the medical treatment records, a determination must be made as to whether drug use is material to the causes for Claimant's ongoing medically documented skin condition, wound ulceration and healing difficulties, unhealed heel ulcer and cellulitis, and bone infection and numbness from the knee down. None of the medical records provided except one note that the Claimant was counseled to quit using drugs. This note does not connect drug use with heel ulceration and healing difficulties and infections, and that such use was causing Claimant's wounds and healing problems. At the hearing, the Claimant testified that she was no longer using heroin. At best it can be noted that the treating hospital doctors were aware of Claimant's drug use, and that it is also noted that one of the doctor's noted the following: "Notes indicate Claimant should stop using all drugs and smoking products." The notes further state that based on vascular recommendations, she may need foot amputation. In light of her drug use and chronic wound infection, she is at risk for decompensation and future readmission. Again the note does not point to drug use as a material contributing factor to the cause of disability. (March 2014). On August 27, 2014, the Claimant was seen again at which time she advised the ER doctor that she was clean from drug use. No specific drug tests were run at the time of her evaluation and five day stay. Lastly, Claimant's wound care doctor who treated her for chronic left foot infection, and cellulitis likely complicated by bone infection throughout her problems, notes she may be subject to amputation, but does not mention drug use as a contributing factor or that he advised and instructed the patient to quit her drug use. Given the medical evidence presented, the documentation does not establish that the ongoing wound treatment would stop if the Claimant stopped using heroin. Therefore based solely on the medical evidence presented in this record, it is determined that drugs are not material.

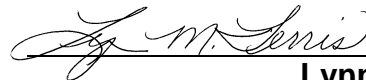
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is 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 Application for MA-P dated November 7, 2013 and retro application (October 2013) and determine Claimant's non-medical eligibility if not already done.
2. A review of this case shall be set for February 2016.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/25/2015**

Date Mailed: **2/25/2015**

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]