

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

**IN THE MATTER OF:**

████████████████████  
████████████████████  
████████████████████

Reg. No.: 2013-63375  
Issue No.: 2009, 4009  
Case No.: ██████████  
Hearing Date: December 18, 2013  
County: Wayne County (82-18)

**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 telephone hearing was held on January 18, 2013 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker.

**ISSUE**

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

**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 April 17, 2013, Claimant applied for MA-P and SDA.
2. On July 25, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated July 29, 2013 denying the Claimant's MA-P application. Exhibit 1
4. On August 5, 2013, the Claimant submitted to the Department a timely hearing request.

5. On October 9, 2013, the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request.
6. An Interim Order was entered on December 20, 2013 requesting the Claimant obtain additional medical records and that the department schedule a consultative medical examination.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on March 8, 2014 and the SHRT denied disability on May 20, 2014.
8. Claimant at the time of the hearing was 41 years old with a birth date of [REDACTED]. Claimant’s height was 5’4” and weighed 324 pounds with a BMI of 55.6.
9. Claimant completed high school.
10. Claimant has employment experience as a mail sorter requiring 12-hour shifts and standing all day with 10-minute breaks every two hours. The Claimant also worked in a manufacturing facility cleaning pipes for tools, standing and lifting pipes weighing approximately 15 pounds. Claimant also performed in-home health care where she was responsible for cleaning, cooking and administering medications. The Claimant was a bus girl in a kitchen loading dishes into dishwashers. The Claimant also was a stock clerk for retail stores unloading boxes, pricing merchandise and stocking shelves.
11. Claimant alleges physical disabling impairments due to osteoarthritis and spinal disorder of the lumbar spine, severe arthritic changes in both knees affecting her gait which was antalgic. The Claimant had hypertension, high blood pressure and morbid obesity and BMI of 55.6.
12. Claimant has not alleged any mental disabling impairments.
13. Claimant’s impairments have lasted or are expected to last for 12 months duration or more.

### **CONCLUSIONS OF LAW**

MA-P is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA-P pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

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).

The Claimant alleges physical disabling impairments due to osteoarthritis and spinal disorder of the lumbar spine, severe arthritic changes in both knees affecting her gait which was antalgic, hypertension and morbid obesity and BMI of 55.6.

Claimant has not alleged any mental disabling impairments.

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

A Consultative Medical Examination was conducted on Fairbury 22, 2014. A review of systems indicated that Claimant has significant limitation with standing, walking and sitting. The examiner noted that the Claimant is morbidly obese. The Claimant was alert, awake and oriented to time place and person. Her weight was 325 pounds her height 5'4". Her blood pressure was 180/110. Respiratory system was clear bilaterally, no rales, wheezing or rhonchi. Cardiovascular system demonstrated regular rate and rhythm, with no murmurs or gallops. The examiner noted that the Claimant had a mildly antalgic gait. Good hand grips were demonstrated bilaterally and noted that Claimant does not use an ambulation aid and that her right knee was enlarged compared to the left with crepitation in both knees. The impression noted fine and gross dexterity is intact. There was no atrophy or sensory changes. Osteoarthritis and spinal disorder was noted. The patient seems to have mainly severe arthritic changes in both knees affecting her gait and stance. There were no documents or imaging reports to review. However, clearly the patient has tenderness along the medial and lateral aspect of both knees worse on the right, with some effusion and crepitation. Range of motion of the knees is limited. Her gait is antalgic. There was no contracture. There was no joint deformity. Balance was normal. Ambulation – the patient has an antalgic gait. She was unable to squat. She could not do tandem walk. The patient was able to get on and off the examination table. Straight leg raising was reduced bilaterally other joints have no limitation to the range of motion other than knees. Range of motion in the lumbar spine was reduced. Knee flexion on the right was 0 to 70 and on the left 0 to 90. Limitations were imposed, the Claimant could stand no more than 15 minutes, could not bend, stoop, carry, push, pull or Tie her shoes. The Claimant also could not squat or arise from a squat or climb stairs noting with assistance one-step at a time with a banister only. Straight leg raising was positive for both legs. The doctor also concluded that the clinical evidence supported and need for a walking aid as well as a brace to reduce pain and was necessary as the Claimant would fall without aid which was clinically required.

The Claimant has been seen regularly monthly at a medical clinic for treatment and prescription refills.

The Claimant was seen on December 9, 2013 by [REDACTED]. At that time, a letter submitted by the agency verified that the Claimant was currently receiving mental health services from that agency and has been seen by a psychiatrist. The medications prescribed were listed. The letter further notes that the Claimant has been treated for major depression, general anxiety and posttraumatic stress disorder. The Claimant's application did not indicate mental impairment as a basis for disability.

A medical examination report was completed on December 18, 2013 by a doctor who treated the Claimant since June 2013. The diagnosis was asthma, hypertension, knee

pain, uncontrolled high blood pressure and obesity. At the time of the examination, the Claimant weighed 326 pounds and her blood pressure was 170/120. Under musculoskeletal, the following notes were provided -- antalgic gait knee right guarded from flexing 0 to 90 and extension with arthritis and crepitus; left knee guarded from flexion 0/20 with crepitus and arthritis; lumbar spine guarded from extension and flexion. The examiner rated the Claimant as stable and imposed limitations. The Claimant could lift 10 pounds occasionally, could stand or walk about two hours in an eight-hour day, Claimant could not walk for more than two hours. The Claimant was evaluated as capable of sitting about six hours in an eight-hour day and a cane was noted as necessary. The Claimant was not restricted as regards the use of her hands/arms or feet/legs in operating foot controls.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and has demonstrated impairments which 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. 1.02 Major Dysfunction of a joint(s) (due to any cause) was also reviewed, and it was determined that the Claimant retains the ability to ambulate and thus the listing was not met. Listing 1.04 Disorders of the Spine was also reviewed in light of Claimant's positive straight leg raising; however, based upon the medical evidence submitted, the severity of required to meet the listing was not met as no diagnostic evidence, such as an MRI was presented to establish any nerve root involvement. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

As a result of these conditions, the Claimant has a number of symptoms and limitations as cited above. Both the consultative doctor and Claimant's family practice doctor imposed limitations indicating Claimant could lift 10 pounds only occasionally, could stand no more than 15 minutes, could not bend, stoop, carry, push, pull or tie her shoes. The Claimant could stand or walk about only two hours in an eight-hour day and could not walk more than two hours in an eight-hour day. The Claimant was evaluated as stable, and that the clinical evidence supported the need for a walking aid, as well as a brace to reduce pain, and was necessary as the Claimant would fall without the aid which was clinically required.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than a two blocks slowly and could stand for 15 minutes and sit for 10 minutes, and required that her leg be held straight. The Claimant testified that she does not wear tie shoes because she cannot tie her shoes. The Claimant does use a cane and testified credibly that she could carry only 5 pounds. The Claimant cannot climb stairs without difficulty and medically requires a handrail, and can only take one step at a time.

In the fourth step of the analysis, the issue to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, Claimant's past employment was as a mail sorter requiring 12-hour shifts and standing all day, with 10-minute breaks every two hours. The Claimant also worked in a manufacturing facility cleaning pipes for tools, standing and lifting pipes weighing approximately 15 pounds. Claimant also performed in-home health care, where she was responsible for cleaning, cooking and administering medications. The Claimant was a bus girl in a kitchen loading dishes into dishwashers. The Claimant also was a stock clerk for retail stores unloading boxes, pricing merchandise and stocking shelves.

The Claimant testified that all of these positions required standing and walking much of the workday, and that several of the jobs required lifting of more than 15 pounds. The Claimant's prior positions involved light work, were unskilled, and are not transferable.

Given the Claimant's documented limitations with standing, walking and sitting, and the limitations imposed by the Consultative examiner for pushing and pulling, squatting, use of a cane, stooping and bending, the Claimant cannot perform any of the functions previously performed in these past jobs. This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations testified by the Claimant and confirmed by medical evidence and the medical assessments and imposition of limitations, that Claimant is not capable of the physical activities required to perform any such position and cannot perform past relevant work, and 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 that 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 that 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 41 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a high school education. 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).

In addition, the Claimant's evaluations performed by both her family practice doctor and the consultative doctor establish that the Claimant has significant limitations with walking, carrying, and standing. Based upon a review of the entire record, including the Claimant's testimony and medical evidence presented, and the objective medical evidence provided in which both doctors place the Claimant at less than sedentary, based on the total impact caused by the physical impairments suffered by the Claimant and the severe obesity with a BMI Of 55.6 which must be considered it is determined that the Claimant is disabled. In doing so, it is found that the combination of 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). 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.

As the Claimant is determined to be disabled for purposes of MA-P the Claimant is also deemed disabled for purposes of SDA.

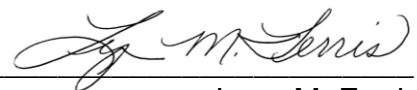
### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

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 is ORDERED to initiate a review of the application dated April 17, 2013 for MA-P and SDA, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for any SDA benefits she is otherwise entitled to receive, if any in accordance with Department policy.
3. A review of this case shall be set for June 2015.



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Lynn M. Ferris  
Administrative Law Judge  
for Maura Corrigan, Director

Date Signed: June 13, 2014

Date Mailed: June 13, 2014

**NOTICE OF APPEAL:** The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the Claimant 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 the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-07322

CC:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]