

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-14683
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: March 10, 2014
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 March 10, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical records. However, Claimant did not submit the evidence within the time frame delineated in the Interim Order Extending the Record of [REDACTED], so the record is now closed and this matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant submitted an application for public assistance seeking MA and Retroactive MA benefits on [REDACTED].
2. On [REDACTED] the Medical Review Team (MRT) determined that Claimant was not disabled.

3. The Department notified Claimant of the MRT determination on S [REDACTED].
4. On [REDACTED], the Department received Claimant's timely written request for hearing.
5. On [REDACTED], the State Hearing Review Team found Claimant not disabled.
6. At the time of the hearing, the Claimant was 59 years old with a birth date of [REDACTED].
7. Claimant has a college education.
8. Claimant is working as a substitute teacher three days a week for \$80.00 per day.
9. Claimant is cleaning aircraft 24 hours per week at \$7.40 per hour.
10. Claimant has a work history in substitute teaching.
11. Claimant suffers from post tibial plateau and proximal fibular fractures.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Tables ("RFT").

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.924(b).

In this case, Claimant is working as a substitute teacher three days a week for \$80.00 per day. Claimant is also cleaning aircraft 24 hours per week at \$7.40 per hour. Claimant applied for MA disability on [REDACTED]. Claimant, testified credibly that she began cleaning aircraft in August of 2013 and resumed substitute teaching in September of 2013.

20 CFR 416.971 states in part, "The work, without regard to legality, that you have done during any period in which you believe you are disabled may show that you are able to work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find that you are not disabled." 20 CFR 972 (a) states that substantial work activity is "work activity that involves doing significant physical or mental activities." A person who earned more than \$1,040.00 (non-blind) per month in 2013 and \$1,070.00 per month in 2014 is considered to be engaged in substantial gainful activity. 20 CFR 416.974.

As Claimant was performing substantial gainful activity beginning in September of 2013, having earned more than \$1,070.00 per month, a finding of not disabled is directed.

If the undersigned to continue with this analysis, Claimant would be disqualified at step two, as Claimant's impairment has not prevented work-related activities for a period of 12 months. Step two requires an impairment that can be expected to interfere with work-related activities for a period of 12 months. Claimant suffers from post tibial plateau and proximal fibular fractures. Claimant's impairment has not interfered with work-related activities for the required time period, as Claimant returned to work in August of 2013. Therefore, Claimant does not meet durational requirements.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or is medically equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

This Administrative Law Judge consulted all listings. The medical records do not support a finding that Claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant has the residual functional capacity (RFC) to perform the requirements of Claimant's past relevant work. 20 CFR 416.920(a) (4) (iv).

An individual's residual functional capacity is the individual's ability to do physical and mental work activities on a sustained basis despite limitations from the individual's impairments. Residual functional capacity is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. Residual functional capacity is the most that can be done, despite the limitations. In making this finding, the trier of fact must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 416.920 (e) and 416.945; SSR 96-8p.) Further, a residual functional capacity assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

The term past relevant work means work performed (either as Claimant actually performed it or as it is generally performed in the national economy) within the last fifteen years or fifteen years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been substantially gainfully employed (20 CFR 416.960 (b) and 416.965.) If Claimant has the residual functional capacity to do Claimant's past relevant work, Claimant is not disabled. 20 CFR 416.960(b)(3). If Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

Claimant's past relevant work included substitute teaching. Claimant testified she has returned to substitute teaching work September of 2013 three days a week and cleans

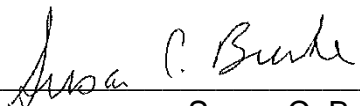
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air craft three days a week. This Administrative Law Judge concludes that Claimant retains the capacity to perform her past relevant work. Thus a finding of not disabled is directed at this step of the analysis as well.

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 not disabled for purposes of the MA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Susan C. Burke
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 4/30/2014

Date Mailed: 4/30/2014

NOTICE OF APPEAL: 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).

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.

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.

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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

SCB/hw

cc:

