

**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.: 2014-17080
Issue No.: 2009
Case No.: ██████████
Hearing Date: March 24, 2014
County: Oakland (03)

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, an in-person hearing was held on March 24, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ also appeared on behalf of Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████ ██████████ ██████████

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 June 28, 2013, Claimant applied for MA-P and retro MA-P to April 2013.
2. On August 9, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent Claimant's AHR the Notice of Case Action dated August 12, 2013, denying the Claimant's MA-P application. Exhibit 1.

4. On December 10, 2013, Claimant submitted to the Department a timely hearing request.
5. On January 30, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on March 26, 2014, ordering the Department to obtain medical records and Claimant to obtain a consultative medical examination with an internist and the completion of a DHS-49. The new medical evidence was still sent to SHRT on May 21, 2014.
7. On July 18, 2014, SHRT denied Claimant's request and found Claimant not disabled.
8. At the time of the hearing, Claimant was 57 years old with a birth date [REDACTED] [REDACTED]. Claimant is now 58 years of age. Claimant was 5 '2" tall and weighed 130 pounds.
9. Claimant has a high school education.
10. Claimant currently works part time, and her earnings from her part-time employment do not meet the Substantial Gainful Activity (SGA) income limit for 2014.
11. Claimant's prior work experience is performing driver intervention program work through the court system. The courts would send people to her to register and she answered phones and traveled to various probation offices and courts. Some of the work was sitting at a computer. Claimant also worked for a title company as a closer of real estate transactions.
12. Claimant has not alleged any mental disabling impairments.
13. Claimant alleges physical disabling impairments due to multiple surgeries involving her intestines including removal of her appendix and removal of her large intestine. Claimant also has undergone reconstruction of an ileostomy. Claimant recently again had a balloon inserted in her intestine to open a blockage.
14. Claimant's impairments have lasted or are expected to last 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.

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 the 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).

In this case, Claimant alleges physical disabling impairments due to multiple surgeries involving her intestines including removal of her appendix and removal of her large intestine. Claimant also has undergone reconstruction of an ileostomy. Claimant recently again had a balloon inserted in her intestine to open a blockage. These conditions are also due to chronic diverticulitis which is severe.

Claimant has not alleged any mental disabling impairments.

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

A consultative examination was performed [REDACTED]. The examiner gave a current diagnosis of surgery for diverticulitis. The following limitations that were expected to last more than 90 days were imposed. Claimant could frequently lift 10 pounds and occasionally lift 20 pounds. Claimant could stand or walk less than 2 hours in an 8-hour workday. Claimant had full use of her hands, arms, feet and legs. Claimant's condition was noted as stable. The physical limitations were supported by scars and tenderness as a result of numerous surgeries. No mental limitations were imposed and Claimant's condition was rated as stable.

Claimant was admitted to the hospital [REDACTED] at which time she was treated for diverticulitis, status post Hartman diverting ileostomy, status post reversal of ileostomy. At the time of discharge, Claimant was cleared to resume a regular diet and was independent in all of her activities of daily living. She is restricted from lifting until she follows up postoperatively. She should not drive due to taking narcotic pain medications. She has full weight bearing status and her return to work will be decided on follow up.

Claimant was admitted to the hospital [REDACTED] for a 10-day stay. The discharge diagnosis at the time was high ileostomy output status post exploratory laparotomy, insertion of a balloon due to stricture which required a diverting ileostomy. Also noted was acute kidney injury secondary to dehydration from high outputs. At the time of admission, Claimant was given IV fluids and was on opium and lomatil for pain. The preoperative diagnosis was anastomotic stricture in the rectosigmoid region. At the time of her admission, Claimant had complaints of nausea and vomiting. Her history shows that she was operated on for sigmoid diverticulitis with a low anterior resection with Hartman's colostomy. The notes indicated that, ever since the surgery, Claimant has reported intermittent nausea. Claimant was operated on and received a diverting ileostomy [REDACTED] to bypass the large intestine.

Claimant was hospitalized for a one-day stay [REDACTED] for diverticulitis. No surgical procedures were performed. Patient was treated with IV antibiotics and was in stable condition at discharge with decreased abdominal pain. Claimant was expected to make a full recovery at the time of her discharge.

Claimant was admitted [REDACTED] for abdominal pain due to acute recurrent diverticulitis. At the time of her discharge, Claimant also had chronic anemia which was stabilized. Electrolyte abnormalities were also noted as was a history of hypothyroidism and hypertension. Claimant was advised to follow up with her doctor and she will need a colonoscopy follow-up and further evaluation due to her anemia.

[REDACTED] Claimant had an appendectomy and removal of a portion of the rectal sigmoid due to severe acute and chronic diverticulitis with focal rupture.

[REDACTED] Claimant was admitted to the hospital for acute diverticulitis, COPD, hypertension, hypothyroidism, and anemia. Claimant originally presented to the hospital with complaints of abdominal pain and nausea and vomiting. Claimant at the time was diagnosed with recurrent sigmoid diverticulitis and has had multiple hospitalizations previously. The Intestine was resected and a colostomy was also installed and Claimant underwent an appendectomy. At the time of the discharge, Claimant was restricted to light lifting activity.

Claimant was admitted for a one-day stay [REDACTED] due to abdominal pain, nausea, vomiting, and coughing. The discharge diagnosis was acute exacerbation of COPD, bronchitis and hypertension.

[REDACTED] a partial colonoscopy was performed which was incomplete because it could not be performed safely due to Claimant's diverticulitis.

[REDACTED] Claimant was admitted and underwent a procedure for recto sigmoid colon resection and creation of Hartman's colostomy with appendectomy.

[REDACTED] Claimant was seen for evaluation after undergoing a colonoscopy. No significant abnormalities were noted. At the time of the evaluation, a recommendation was made to proceed with the takedown of her colostomy.

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, Claimant's impairments have been examined in light of the listings and, after a review of the evidence, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 5.07, Digestive Disorders - Short Bowel Syndrome was examined, but it was determined that the Listing was not met. Short bowel syndrome (SBS), is due to surgical resection of more than one-half of the small intestine, with dependence on daily parenteral nutrition via a central venous catheter

(see 5.00F). The further requirements of the listing require medical documentation that the claimant is dependent on daily parenteral nutrition to provide most of his/her nutritional requirements. No such evidence was presented.

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. Claimant could walk one half mile very slowly. Claimant could not stand or sit more than one to one and one-half hours. Claimant could not squat. Bending was restricted due to her surgeries. Claimant could carry 2 to 3 pounds. Claimant could touch her toes and could shower and dress herself. Claimant requires assistance with grocery shopping as she cannot carry grocery bags. Claimant's testimony was deemed credible. The consultative examiner found there were limitations and imposed limitations on sitting (less than 6 hours in an 8-hour work day, standing less than 2 hours in an 8-hour workday and frequently lifting/carrying 10 pounds.

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 past employment was performing driver intervention program work through the court system. The courts would send people to her to register. She also answered phones and traveled to various probation offices and courts as a facilitator for the driver intervention programs. Some of the work was sitting at a computer. Claimant traveled much of the day. Claimant also worked for a title company as a closer of real estate transactions which also required travel to various locations to expedite closings. Claimant credibly testified that she could no longer perform such work due to the standing and lifting, driving and traveling requirements. Claimant's work was semi skilled and is not transferable. This prior work requires abilities and capabilities that, based on the limitations presented, can no longer be achieved by Claimant. Therefore, it is determined that Claimant is no longer capable of past relevant work. 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, Claimant was 57 years old and is now 58 years of age and, thus, is considered a person of advanced age for MA-P purposes. Claimant has a high school education and has been restricted to standing/walking less than 2 hours in an 8-hour workday, sitting 6 hours in an 8-hour workday, and lifting frequently up to 10 pounds and occasionally 20 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 Claimant's credible testimony and medical evidence presented, and the objective medical evidence, particularly the consultative doctor's evaluation placing Claimant at sedentary work, it is determined that the total impact caused by the physical impairments suffered by Claimant must be considered and that Claimant is capable of sedentary work as she cannot meet the required standing/walking or lifting requirements for light work. In doing so, it is found that the combination of Claimant's physical impairments in totality has a major impact on her ability to perform work activities.

In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.06, it is found that the Claimant is disabled for purposes of the MA-P program at step 5.

DECISION AND ORDER

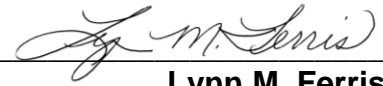
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled .

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. Review of the application dated June 20, 2013, and retro application (to April 1, 2013) if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for August 2015.



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

Date Signed: August 14, 2014

Date Mailed: August 14, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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 48909-07322

LMF/pf

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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