

**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.: 2014-24549
Issue No.: 2009
Case No.: ██████████
Hearing Date: May 15, 2014
County: Wayne (19)

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 May 15, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included

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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 September 26, 2013, Claimant applied for MA-P and retro MA-P to June 1, 2013.
2. On November 1, 2013 the Medical Review Team denied Claimant's request.
3. The Department sent Claimant the Notice of Case Action dated November 6, 2013, denying Claimant's MA-P application. Exhibit 1.
4. On, January 28, 2014, Claimant submitted to the Department a timely hearing request.

5. On March 21, 2013 the State Hearing Review Team (SHRT) found Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on May 16, 2014, ordering the Department to obtain medical records and Claimant to obtain a DHS-49 from her treating doctor.
7. On July 14, 2014, SHRT denied Claimant's request and found Claimant not disabled.
8. At the time of the hearing, Claimant was 53 years old with a birth date ■■■■■■■■■■. Claimant was 5 '0" tall and weighed 169 pounds. Claimant has lost 30 pounds within the last six months.
9. Claimant completed the 10th grade and completed a GED.
10. Claimant currently works part time as a security guard, 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 included performing janitorial duties, factory work for an auto company lifting panels off the assembly line and security guard work.
12. Claimant has alleged mental disabling impairments due to depression and anxiety.
13. Claimant alleges physical disabling impairments due to gout in her right foot. Claimant is also obese. Claimant has asthma, chronic bronchitis, arthritis in her hips, hypertension, and COPD with use of a nebulizer machine.
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 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 the current case, Claimant alleges physical disabling impairments due to gout in her right foot. Claimant is also obese. Claimant has asthma, chronic bronchitis, arthritis in her hips, hypertension and COPD with use of a nebulizer machine.

Claimant has alleged a mental disabling impairment due to depression and anxiety.

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

Claimant's treating doctor completed a Medical Examination Report [REDACTED]. Claimant's doctor has seen her for one year. The diagnosis was gout, asthma, and hypertension and noted depression and that Claimant was starting therapy for mental health. Based upon this diagnosis, Claimant was evaluated as stable and, although the box for no limitations was checked, the report noted the following limitations. Claimant could lift less than 10 pounds frequently and occasionally 10 to 20 pounds. Claimant could stand and/or walk less than 2 hours in an 8-hour work day. Claimant could sit 6 hours in an 8-hour work day. No restrictions were imposed regarding the use of Claimant's hands or arms or feet. With regard to meeting Claimant's needs in the home, the examiner noted that Claimant does get help with grocery shopping. Claimant was prescribed a nebulizer and albuterol for wheezing.

The Claimant was on a nicotine patch for smoking cessation.

Claimant was evaluated and given a consultative mental status exam regarding her depression and anxiety [REDACTED]. During the exam, Claimant presented as somewhat tense and anxious. No hallucinations were noted. The overall mood was noted as depression with blunted affect, decreased facial expressions and little variation in voice tone. The examiner opined that, because of the severity of her symptomology, it is possible that the pressures of work could cause deterioration of her conditions. The diagnosis was recurrent major depression. Her GAF score was 50 and the prognosis was guarded.

Claimant was admitted to the hospital for chest pain and wheezing [REDACTED]. Claimant was discharged in stable condition with a diagnosis of bronchitis and given prednisone and albuterol for breathing. No acute cardiopulmonary process was identified on Claimant's chest x-ray.

Claimant was seen and admitted [REDACTED] with a severe cough, shortness of breath and congestion. Claimant was placed on oxygen. Claimant also presented one week earlier due to shortness of breath, coughing and wheezing and was given steroids and an antibiotic and did not improve. At the time of the admission, she was using an inhaler at home. On examination her chest was not clear to auscultation bilaterally and wheezing was noted. Claimant also had tachycardia. Claimant was admitted for treatment of COPD and hypoxia. An x-ray showed no acute cardiopulmonary disease. Swelling of the right foot was noted on examination as was wheezing. The impression

was bronchitis secondary to COPD, gout, anxiety, and hypertension, and hypoxia secondary to bronchitis, on oxygen.

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 1.02 Major Dysfunction of a Joint(s) due to any cause) was considered; however, the listing requirements were not met or supported by the available medical evidence as Claimant was still able to ambulate. Listings 3.30 B Asthma and 3.02 Chronic Obstructive Pulmonary Disease were also considered, but the requirements of the listings were not met as no pulmonary function testing was provided and the requisite number of admissions for the Asthma listing were not met. Listings 12.04 Affective Disorders and 12.06 Anxiety-related Disorders were also examined and, although the consultative examiner did find that Claimant's symptomology was severe and caused the examiner to find Claimant's condition was guarded, the overall requirements necessary to demonstrate a listing were not fully found by the examiner. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

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 less than a mile and could not stand more than a few hours and sit a couple of hours. Claimant experienced pain due to gout and arthritis. Claimant thought she might be able to carry 20 to 30 pounds. Claimant could squat and touch her toes and must use a cart when grocery shopping. Claimant's testimony was deemed credible. Claimant's treating doctor found there were limitations and imposed limitations on sitting and standing as well as carrying weight and imposed more stringent restrictions than Claimant.

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 included janitorial duties, factory work for an auto company lifting panels off the assembly line and security guard work. In addition her security position required that she be on her feet more than her limitations. The auto work also required Claimant to be on her feet much of the day and required constant lifting of auto part panels weighing 15 to 20 pounds. Claimant credibly testified that she could no longer perform such work due to the standing and lifting requirements. Claimant's work was unskilled and, therefore, transferability is not an issue. 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 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.

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 53 and, thus, is considered a person approaching advanced age for MA-P purposes. Claimant has a GED high school education and has been restricted to standing and walking less than 2 hours in an 8-hour workday, sitting 6 hours in an 8-hour workday, and lifting frequently up to less than 10 pounds and occasionally 10 to 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 treating doctor's evaluation placing Claimant at a sedentary work level, and the mental status consultative examiner's impression and imposition of a guarded status and noted severe symptoms of depression, it is determined that the total impact caused by the physical and mental impairments in combination suffered by Claimant must be considered and that Claimant is capable of sedentary work as she cannot meet the required standing 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 201.12, it is found that the Claimant is disabled for purposes of the MA-P program at step 5.

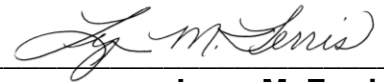
DECISION AND ORDER

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

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. A review of the application dated September 26, 2013, and retro application (June 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.

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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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