

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014 24796
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: May 15, 2014
County: Wayne County DHS (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 the Claimant, [REDACTED], of [REDACTED], appeared as a witness for the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

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 13, 2013, the Claimant applied for Medical Assistance (MA-P) and State Disability Assistance (SDA).
2. On January 3, 2014, the Medical Review Team found the Claimant was not disabled.

3. The Department sent the Claimant the Notice of Case Action on January 8, 2014 denying the Claimant's MA-P and SDA application.
4. On, January 16, 2014, the Claimant submitted to the Department a timely hearing request.
5. On March 21, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request. Exhibit 2
6. An Interim Order was issued on May 16, 2014, ordering the Department to obtain the treatment records from [REDACTED] from January 2014 through present, and obtain the medical treatment records for the last six months from Dr. [REDACTED], the Claimant's treating Doctor for her back and neck. The Department requested the records from both the Doctor and [REDACTED] and did not receive any response from either provider.
7. The Claimant, pursuant to the Interim Order issued May 16, 2014, was also required and ordered to obtain a DHS 49 from Dr. [REDACTED], and a DHS 49 D and E from her treating psychiatrist a [REDACTED]. The Claimant did not provide the requested updated medical information.
8. Because no records or new medical evidence was received pursuant to the Interim Order, this matter was not sent to the State Hearing Review Team and the hearing record was closed.
9. Claimant at the time of the hearing was 56 years old, with a birth date of [REDACTED]. Claimant height was 5'7" and weighed 137 pounds.
10. Claimant completed high school and had an Associate's degree in healthcare.
11. Claimant's prior work experience included stewardess/ flight attendant for aircraft passenger safety, an office manager/coordinator for a foster care department, a parts clerk working in a warehouse, and a master medical claims examiner and processor for a large health insurance provider and secretarial work. Exhibit 1 pp. 32.
12. The Claimant has alleged mental disabling impairments due to depression and anxiety.
13. The Claimant has alleged physical disabling impairments due to upper and lower back pain, as well as cervical pain with radiation to the fingertips, diabetes, and carpal tunnel syndrome in her left hand.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to

1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal 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).

Claimant alleges physical disabling impairments due to upper and lower back pain, as well as cervical pain with radiation to the fingertips, diabetes, and carpal tunnel syndrome in her left hand.

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

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

The Claimant was seen by her doctor on September 7, 2012. At that time, based on a review of an MRI of the C-spine and the lumbar spine, the doctor formed the following impressions--left cervical radiculitis, left cervical myositis, left lumbar radiculitis and lumbar S1 dysfunction. An MRI of the C-spine dated May 9, 2012, noted neural foraminal narrowing. The MRI of the lumbar spine of same date revealed large central disc herniation with extrusion caudally the S1 vertebral body, with mild bilateral inferior new nerve root encroachment at same level, and posterior lateral left disc bulge at L4 L5 with a superimposed annular tear. The notes also indicate that the Claimant had an epidural for back pain prior to the examination, the exam notes also noted positive straight leg raising on the left and a positive Patrick's test. The Claimant was referred to another doctor for both cervical and lumbar epidurals. At that time, the Claimant was on work restrictions, lifting no more than 20 pounds and no bending, twisting and no overhead activity. The Claimant was prescribed physical therapy three times weekly.

The Claimant was seen on March 18, 2013 for a consult exam who later became her current treating doctor. The Claimant reported neck pain and low back pain, as well as left shoulder pain. At the time of the examination, the Claimant reported injuring herself attempting to lift airplane tires weighing 180 pounds, at which time she felt a pop in her lower back. The Claimant also injured her back in April 2012. The cervical spinal examination was performed noting a positive Spurling's test on the left with paraspinal muscle spasms. The exam also reviewed the left shoulder with tenderness to palpation posterior active and passive and limited range of motion to 120° in the left shoulder, beyond that pain was too intense. Active and passive abduction limited to just over 105°. A positive Hawkins test and negative drop arm test was also noted. The

impression was back pain rule out cervical disc pathology, possible cervical radiculopathy. Left shoulder pain rule out possible rotator cuff injury. Low back pain with MRI findings of L5 S1 disc herniation. The report also noted multiple level disc herniation's in the cervical spine at C3 – four, C4 – C5 and C5 – C6 with disc and osteophyte and facet changes at C5 – C6 and C6 – C7. The examining doctor ordered the following testing. An MRI of left shoulder to determine if there was a rotator cuff tear. The doctor was going to order electro diagnostic studies of her neck and upper extremities to determine if there is an ongoing cervical radiculopathy. Physical therapy was prescribed for neck and left shoulder three times weekly for 4 weeks. The doctor decided to hold off on any treatment for lumbar spine. In the doctor's opinion, among the three areas, the neck and the left shoulder are the areas that require the highest level of priority. The doctor recommended work restrictions which were not specified. No updated records from this doctor after they were requested by the Department were received. The Claimant was also requested to obtain a DHS 49 from [REDACTED] which was also not received.

A mental status exam evaluation was performed July 31, 2013 by a consultative examiner. At the time of the exam, the prognosis was fair, the diagnosis was acute stress disorder and adjustment disorder, with anxiety and depressed mood. The GAF score was 50. The examiner found the ability to relate and get along with fellow workers and supervisors was not impaired. Ability to understand, remember and carry out tasks appears to be mildly impaired. Ability to maintain attention and concentration, persistence pace and effort is mildly impaired. Ability to withstand stress and pressure associated with day-to-day work activities is moderately impaired.

The Claimant has received treatment at [REDACTED] a community mental health provider. The Claimant was seen beginning in March 2013 by a case manager at least weekly. On April 10, 2013, the Claimant was diagnosed with adjustment disorder with anxiety, was given a GAF score of 50, and was placed on psychotropic medicines occasion. The then examiner noted that the Claimant was uncooperative with providing information and was guarded. Many of the records provided were summaries of assistance given to the Claimant by her case manager to assist with activities of applying for benefits and locating housing due to her homelessness and did not involve information regarding treatment for mental impairments. Medication reviews conducted on the August 22, 2013 exam was essentially normal, except the Claimant did exhibit irritable behavior, but notes indicate no psychosis evident. The updated medical records were requested by the Department pursuant to the Interim Order issued in this case and no records were received. The Claimant was also requested pursuant to the Interim Order to obtain a DHS 49 D and E from her treating psychiatrist at [REDACTED], which was also not received.

The Claimant was seen in the hospital on September 23, 2012 for a three-day stay. At that time the discharge, diagnosis was acute diabetic ketoacidosis, new onset of diabetes mellitus type II, acute kidney injury which resolved dehydration and left anti-cubital phlebitis which is resolving. At the time, the Claimant reported to the hospital

she was admitted due to increasing frequency of urination. Claimant's records indicate that her diabetes is controlled since this hospitalization.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not substantially gainfully employed and her impairments 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. Listing 12.04 Affective Disorders was also reviewed for depression. Based upon the medical evidence available, the Claimant did not demonstrate marked mental limitations required by the listing in any of the categories listed and had no marked limitations and was without limitation in her ability to get along with co-workers and supervisors. Listing 1.04 Disorders of the spine was examined with regard to the medical evidence available, and the MRI's of the cervical and lumbar spine were reviewed and upon review it was determined that Listing 1.04 was not met as the severity requirements of the listing were not met with regard to the requirement that the condition result in compromise of a nerve route or the spinal cord.

Claimant has a number of symptoms and limitations, as cited above. As a result of these conditions, Claimant testified to the following symptoms and abilities. The Claimant completed an Activities of Daily living dated 10/10/13, where she indicated that she can do her laundry, vacuum and light household work. Exhibit 1, pp.298. The Claimant stated that she could stand an hour and sit an hour, and at the time could drive. At the hearing the Claimant stated that she could walk a half mile to a mile, could not squat, could bend at the waist, but was limited in her range of motion. She can shower and dress herself and has difficulty with reaching and thought she might have difficulty carrying a gallon of milk.

The only objective functional evaluation was given by her doctor in 2012, referenced above, restricting her lifting to 20 pounds. No other updated physical functional evaluation by [REDACTED] by way of a DHS 49 was provided by the Claimant, therefor the medical evidence available was relied upon.

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 stewardess/flight attendant for aircraft passenger safety, an office manager/coordinator for a foster care department, a parts clerk working in a warehouse, and a master medical claims examiner and processor for a large health insurance provider and secretarial work. Exhibit 1 pp. 32.

The Claimant's work was unskilled (parts clerk) and as well as semi skilled (secretarial and medical claims evaluation and processing and therefore transferability is not an issue. Some of the prior work, was sedentary work of a secretarial nature which

involved typing and occasional filing work, as well as a medical secretarial as a medical claims examiner and human services administration position for a foster care agency as an office coordinator. The lack of a medically documented current functional limitation evaluation from the Claimant's treating doctor was not available. Based upon the objective medical evidence available, the Claimant's carpal tunnel condition was not supported by the medical records provided, and it is determined that although the Claimant can no longer objectively perform the parts stocking job because of the range of weight lifting required it is determined that the Claimant can however still perform secretarial work of a sedentary nature. Therefore, it is determined that the Claimant is capable of performing past relevant work and, therefore, is deemed not disabled at Step 4.

Assuming *arguendo* that a Step 5 analysis was necessary, the Claimant's testimony and the medical evidence available of her abilities, place the Claimant as capable of performing sedentary work. Thus, given the Claimant's age, 56, high school education with an Associate's degree in health care which places her in the category of a person of advanced age, and given that her semi-skilled work is considered transferable, the Claimant would be deemed not disabled at Step 5, as well as it is determined based upon her testimony and the available objective medical evidence, that Claimant is capable of performing sedentary work. In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains 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). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.07 Claimant would be found not disabled for purposes of the MA-P program at Step 5 as well.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal 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.

In this case, the Claimant is found not disabled for purposes of the MA-P program; therefore, is found not disabled for purposes of SDA benefit program as well.

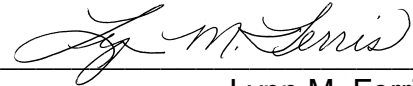
In light of the foregoing, it is found that the Claimant is not disabled for MA-P and SDA benefit programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly,

The Department's decision is hereby AFFIRMED.



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

Date Signed: October 7, 2014

Date Mailed: October 7, 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

2014-24769/LMF

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/tm

cc:

