

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2014 17886
Issue No(s): 2009
Case No: ██████████
Hearing Date: April 16, 2014
County: Wayne (43)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 April 16, 2014 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ also appeared as a witness. Participants on behalf of the Department of Human Services (Department) included ██████████ Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On October 1, 2013, Claimant applied for MA-P.
2. On October 23, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated November 14, 2013, denying the Claimant's MA-P and SDA application.
4. On December 10, 2013, Claimant submitted to the Department a timely hearing request.

5. On February 11, 2014, the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request.
6. An Interim Order was issued on April 17, 2014. The Claimant was to obtain a DHS 49, Medical Exam Report which was not received. Inquiry was made by the undersigned asking the Department whether the evidence was received, and requesting follow up, but no response was received from the Department.
7. Claimant at the time of the hearing was 48 years old, with a birth date of [REDACTED]; the Claimant is now 49 years of age. Claimant’s height was 5’ 2” and weighed 188 pounds. BMI 34.4.
8. Claimant completed high school and went to cosmetology school. Claimant’s prior work experience includes a janitorial housekeeper, housekeeping, security guard, and hairdresser. The Claimant is not presently working and last worked in July 2013.
9. The Claimant has not alleged mental disabling impairments in her application.
10. Claimant alleges physical disabling impairments due to right sided paralysis and nerve damage due to a stroke (CVA) with intra cerebral hemorrhage. The Claimant also suffers from seizures and epilepsy as well as high blood pressure and dysthymic disorder. The Claimant also had Cellulitis and abscess of upper arm and forearm requiring surgery of skin and tissue. The Claimant requires the use of a cane when walking.
11. Claimant’s impairments have lasted or are expected to last for 12 months duration or more.

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 right sided paralysis and nerve damage due to a stroke (CVA) with intra cerebral hemorrhage. The Claimant also suffers from seizures and epilepsy, as well as high blood pressure and dysthymic disorder. The Claimant also had cellulitis and abscess of upper arm and forearm requiring surgery of skin and tissue. The Claimant requires the use of a cane when walking.

Claimant has not alleged any mental disabling impairments.

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

The Claimant credibly testified that she had a stroke in CVA in August 2013, and was hospitalized for 3 weeks and also went to rehabilitation. Thereafter, the Claimant had residual weakness of the right side, both upper and lower extremities. The Claimant was hospitalized for 3 weeks and underwent physical therapy for several weeks in-patient.

A Medical Examination Report was performed on September 6, 2013 by Claimant's family medicine doctor. The diagnosis was CVA, hypertension and seizures. At the time of the exam, the Claimant was ambulating with a cane. The report noted right upper and lower extremity weakness compared to left. The Claimant's condition was stable and limitations were imposed which were expected to last more than 90 days. The Claimant was unable stand and or walk less than 2 hours in an 8 hour work day. The Claimant was unable to sit less than 6 hours in an eight hour work day. An assistive device, a cane was medically required. Due to right sided weakness, the examiner was unable to evaluate the capability to lift/carry weight. The Claimant was rated as having full use of her left hand/arm for repetitive actions, including simple grasping, reaching, pushing/pulling and fine manipulating, and could operate foot controls with both feet. No mental limitations were imposed. The Claimant was rated as unable to meet her needs in the home, including bathing and dressing due to right sided weakness.

The Medical Examination Report and the DDA review were the only evidence available to be examined. Much of the medical evidence relied upon by the DDA was not contained in the case record.

In addition, the Claimant has a number of conditions which she credibly testified to which affect her physical abilities. At the time of the hearing, the Claimant was 5'2" and weighed 188. The Claimant credibly testified that due to her right sided weakness and nerve damage, she cannot feel on that side and must walk with a cane. She cannot write fast or type and has problems with memory and does not drive due to having no feeling in her right foot. The Claimant requires assistance with dressing and household chores, such as cooking, as she can only prepare microwave dinners. The Claimant credibly testified that she could stand for 10 minutes because her right leg is numb and became fatigued. The Claimant could sit for 20 to 25 minutes, and then required rising and stretching due to her muscles tightening up. She cannot bend on her right side but

can bend on left. Claimant thought she could walk less than half block, and could not squat. The Claimant has decreased lifting carrying capacity of 5 pounds with the left hand/arm. The Claimant further credibly testified that she could not do laundry because of both the requirements of bending, going up and down steps, as well as carrying the laundry, due to continuing weakness on her right side. The Claimant does not grocery shop as she cannot do so, and her family does all her shopping. The Claimant has difficulty sleeping and is frequently up during the night.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and has not worked since 2013, and her impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of several listings, Listing 1.03 Epilepsy, petite mal and 11.04 Central nervous System Vascular Accident. The Listing requires: **11.04 Central nervous system vascular accident**. With one of the following more than 3 month's post-vascular accident:

- A. Sensory or motor aphasia resulting in ineffective speech or communication; or
- B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C);
- C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms.

After a review of the medical evidence, it is determined that the objective medical evidence does not support a finding that the Listing 11.03 regarding epilepsy is met. The last noted seizure was in October 2013, and no further evidence of seizure activity was presented.

As regards the listing 11.04 Central Nervous System Vascular Accident, a review of the evidence requires a finding that the listing has been demonstrated as met. The Claimant is limited in many of her activities three months post CVA due to her right-sided weakness. She cannot drive and requires assistance with many activities of daily living. She does not write well, cannot type and walks with a cane and limp. She also cannot drive due to weakness in her right leg. Given these documented circumstances and the evaluation of her doctor who also places limitations on standing, sitting and use of her right hand, the Claimant is deemed disabled at Step 3 with no further analysis required.

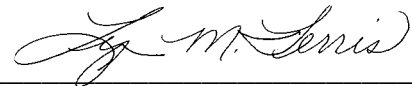
DECISION AND ORDER

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. The Department is ORDERED to initiate a review of the application for MA-P dated October 1, 2013 and retro application, if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for February 2016.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Human Services

Date Signed: February 10, 2015

Date Mailed: February 10, 2015

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/tm

cc:

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