

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

IN THE MATTER OF:

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Reg. No.: 15-004939
Issue No.: 4009
Case No.: ██████████
Hearing Date: May 07, 2015
County: Wayne-District 15

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 7, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Medical Contact Worker.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. The record closed on June 8, 2015, and the matter is now before the undersigned for a final determination.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the 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 December 19, 2014, Claimant submitted an application for public assistance seeking SDA benefits.
2. On February 20, 2015, the Medical Review Team (MRT) found Claimant not disabled (Exhibit A, pp. 6-8).
3. On February 23, 2015, the Department sent Claimant a Notice of Case Action/Health Care Coverage Determination Notice denying the application based on MRT's finding of no disability (Exhibit A, pp. 2-5).

4. On March 18, 2015, the Department received Claimant's timely written request for hearing.
5. Claimant alleged physical disabling impairment due to knee and hip pain from arthritis.
6. Claimant alleged mental disabling impairment due to depression.
7. On the date of the hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; she is [REDACTED]" in height and weighs about [REDACTED] pounds.
8. Claimant received a GED. She can read and write and do basic math.
9. Claimant has an employment history of work as a cook for a facility.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

A disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

To determine whether an individual is disabled for SSI purposes, the trier of fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in substantial gainful activity (SGA);
- (2) whether the individual's impairment is severe;

- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

In the present case, Claimant alleges physical disabling impairment due to arthritis and mental disabling impairment due to depression. The medical evidence presented at the hearing, was reviewed and is summarized below.

On January 27, 2015, Claimant's primary care physician completed a medical examination report, DHS-49, and identified Claimant's diagnoses as degenerative joint disease of the hips and knees, bilateral, and obesity. The doctor noted that Claimant used a walker. The doctor identified the following limitations: (i) she could occasionally lift less than 10 pounds but never 10 pounds or more, (ii) she could stand and/or walk less than 2 hours in an 8-hour day, and (iii) she needed an assistive device to ambulate. The doctor checked that the limitations were expected to last more than 90 days and wrote in "large psychological component" next to the checkbox. The doctor noted that Claimant suffered from depression but did not identify any mental limitations (Exhibit A, pp. 13-15.)

On January 26, 2015, Claimant's orthopedic surgeon completed a medical examination report, DHS-49, and identified Claimant's diagnoses as degenerative joint disease of the right and left hips and right and left knees and obesity. The doctor indicated that x-rays taken at [REDACTED] on September 26, 2014, showed advanced arthritic changes of both right and left knees and that she had a history of severe degenerative joint disease of both hips. The doctor identified Claimant's condition as deteriorating and stated that she could never lift any weight and she could stand or walk less than 2 hours in an 8-hour day. The doctor indicated that Claimant could sit for about 6 hours in an 8-hour day and could use both hands/arms and feet/legs for repetitive actions. He

noted that she used a cane to walk to deal with her pain when walking (Exhibit A, pp 16-18).

At the hearing, Claimant testified that she was suffering from depression. While she did not identify depression as one of the conditions that limited her ability to work in the medical-social questionnaire, DHS-49F, she did indicate in her activities of daily living, DHS 49-G that she was taking anti-depressants. Also, the DHS-49 completed by Claimant's primary care physician identified depression in her physical examination of Claimant and that there was a "large psychological component" to her physical limitations (Exhibit A, pp. 9-12, 14, 19-23.)

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented, Listings 1.00 (musculoskeletal system), particularly 1.02 (major dysfunction of a joint), and 12.00 (mental conditions) were reviewed. Claimant's medical record in this case is not sufficient to support a finding that her impairments meet, or equal the severity of, any considered listing. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The RFC takes into consideration the total limiting effects of all impairments, including those that are not severe. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

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. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, . . . he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

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, . . . he or she can also do sedentary and light work.

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, . . . he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, . . . he or she can also do heavy, medium, light, and sedentary work. 20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

In this case, Claimant alleges both exertional and nonexertional limitations due to her medical condition. Because of her arthritis, Claimant testified that she used a walker to walk and could walk about a half block with her walker, that she could sit but had to get up periodically because of discomfort in her hips, and that she could stand for 15 to 20 minutes before she would have to sit down. She could not bend or squat because of her knees. She testified that she could use only her right hand to lift an item as heavy as a gallon of milk but would have to adjust her hand to carry it. She explained that she had modified her routine, using a shower chair and wearing loose clothing and slip-on shoes, in order to care for herself and had others do chores for her because she was unable to do them.

In this case, both Claimant's primary care physician and her orthopedic surgeon completed medical examination reports. Generally, more weight is given to the opinion of specialist than a source who is not a specialist. 20 CFR 416.927(c)(5). The DHS-49 Claimant's orthopedic surgeon completed on January 26, 2015, showed that he first examined Claimant in January 2004. He indicated that Claimant suffered from severe degenerative disease of both knees and hip; her condition was deteriorating; and she could never lift or carry any weight, could stand and/or walk for less than 2 hours in an 8-hour workday, and needed a cane for walking. She could sit for about 6 hours in an 8-hour day. The doctor stated that his conclusions were supported by September 26, 2014 x-rays (Exhibit A, pp. 16-19.) The Department was ordered to obtain the x-ray results after the hearing but advised that the hospital did not provide them. Based on Claimant's orthopedic surgeon's limitations, coupled with Claimant's own testimony, Claimant is capable of performing, at best, sedentary work.

Claimant also alleged nonexertional limitations due to depression and testified that she experienced anxiety attacks, memory loss, crying spells, and suicidal thoughts. She indicated that she was hospitalized in the psychiatric unit due to her mental condition in March 2015. Although the Department was ordered to obtain the hospital records, it advised that the hospital had not complied with its request. In the January 27, 2015,

DHS-49 completed by Claimant's primary care physician, the doctor reported that Claimant was depressed, and although she did not identify any mental limitations, she indicated that there was a "large psychological component" to her physical limitations (Exhibit A, pp. 13-15). At the hearing, Claimant was very emotional and distraught over her physical and financial condition, including her recent homelessness. She also testified that she had lost 30 pounds over the four to five months preceding the hearing due to her mental condition. Although there was limited medical evidence that Claimant has nonexertional limitations in her ability to perform basic work activities due to her mental condition, the evidence at the hearing established that Claimant had, at a minimum, mild to moderate limitations on her mental capacity to perform basic work activities.

Therefore, after review of the entire record to include Claimant's testimony, it is found, based on Claimant's mental and physical conditions, that Claimant maintains the physical capacity to perform, at best, sedentary work activities and has mild to moderate limitations on her mental capacity to perform basic work activities.

Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to no more than sedentary work activities and has mild to moderate limitations in her mental capacity to perform basic work activities. Claimant's work history in the 15 years prior to the application consists of work as a cook for a large facility (medium, unskilled). In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC 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). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain 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).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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). However, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Claimant was ■ years old at the time of hearing and, thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. She has a GED and a history of unskilled work. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform, at best, sedentary work activities and has mild to moderate limitations on her mental ability to perform work activities.

While the Medical-Vocational Guidelines do not result in a disability finding based on Claimant's exertional limitations, Claimant has nonexertional limitations resulting in mild to moderate restrictions in her ability to perform basic work activities. After review of the entire record, including Claimant's testimony, and in consideration of Claimant's age, education, work experience, physical as well as mental RFC, Claimant is found disabled at Step 5 for purposes of SDA benefit program.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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. Process Claimant's December 19, 2014, SDA application to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;
2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;
3. Review Claimant's continued eligibility in December 2015.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/15/2015**

Date Mailed: **6/15/2015**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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 48909-8139

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