

**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.: 15-001446
Issue No.: 2009
Case No.: ██████████
Hearing Date: March 26, 2015
County: WAYNE-DISTRICT 49
(GRAND RIVER/WAR)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on March 26, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. █████ █████ █████ █████, the Claimant's Authorized Hearing Representative (AHR), also appeared. 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 January 23, 2014, the Claimant submitted an application for public assistance seeking MA-P benefits and retroactive medical assistance to October 2013.
2. On October 30, 2014, the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant/AHR of the MRT determination on October 30, 2014.

4. On January 20, 2015, the Department received the Claimant's AHR's timely written request for hearing.
5. The Claimant alleges physical disabling impairments including chronic pain, spinal bifida, Chiari Malformation, causing fluid and pressure on the brain, migraines, seizures, double vision, nausea and syringomyelia, an abnormal cavity in the spinal column, chronic fatigue and asthma.
6. The Claimant has not alleged any mental disabling impairments.
7. At the time of hearing, the Claimant was ■ years old, with a ■ birth date. Claimant is 5'5" in height; and weighed 165 pounds.
8. The Claimant completed an MBA.
9. The Claimant has no past relevant work experience having last worked in 1997.
10. The Claimant's impairments have lasted or are expected to last 12 months duration 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.

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Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (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.

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). The person claiming a physical or mental disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant 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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (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). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the claimant's alleged impairment(s) is considered under Step 2. The claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). 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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;

5. Responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Claimant has alleged physical disabling impairments including chronic pain, spinal bifida, Chiari Malformation, causing fluid and pressure on the brain, migraines, seizures, double vision, nausea and syringomyelia, an abnormal cavity in the spinal column, chronic fatigue and asthma.

The Claimant has not alleged any mental disabling impairments.

A summary of the medical evidence follows.

The Claimant's treating neurologist completed a Medical Examination Report on [REDACTED]. The doctor gave the diagnosis of Chiari Malformation and Syringomyelia and noted weakness, numbness, visual blurring and chronic migraine. The notes indicate reports of back pain. The neurologist imposed physical limitations which were expected to last more than 90 days. The Claimant was rated in stable condition and was evaluated as limited as follows. The Claimant could occasionally lift 10 pounds, could stand or walk less than 6 hours in an 8-hour workday and could sit less than 6 hours in an 8-hour workday. The Claimant could use neither hand for reaching and pushing/pulling and had the ability to use her hands for fine manipulation skills and simple grasping. The Claimant could not operate foot/leg controls with either foot.

An MRI of the cervical spine dated [REDACTED] was provided indicating a deformity of the posterior aspect of the occiput is consistent with a prior suboccipital craniotomy. There is mild cerebellar tonsillar ectopia. There is increased T2 signal running longitudinally along the course of the cervical and upper thoracic spinal cord consistent with a syrinx. This extends from C2 beyond the inferior most imaged level of T6. Degenerative endplate changes are noted C5-6 and C6-7. There is disc space narrowing at those levels. The MRI also notes that the central left paracentral disc spur with indentation of the left anterolateral aspect of the cervical spinal cord. There is severe bilateral neural foramina narrowing. Syrinx extending from C2 and likely beyond

T6. The MRI also noted disc spurs at multiple levels in the thoracic spine most severe and T7-8, T8-9 and T9-10 effacing the cord anteriorly.

Syringomyelia has several possible causes, though the majority of cases are associated with a condition in which brain tissue protrudes into your spinal canal (Chiari malformation).

A consultative examination was conducted on [REDACTED] which is not given great weight as there is reliable evidence by the Claimant's treating neurologist. The consultative exam noted some limitation with neck movement, peripheral neuropathy, and frequent headaches. The doctor limited standing to 30 minutes to an hour and noted straight leg raising was positive.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The claimant has alleged physical disabling impairments which include chronic pain, spinal bifida, Chiari Malformation, causing fluid and pressure on the brain, migraines, seizures, double vision, nausea and syringomyelia, an abnormal cavity in the spinal column, chronic fatigue and asthma.

Listing 11.19 was reviewed and was determined based upon the evidence available and Claimant's medical evaluations including physical capabilities that the listing was not met. The Listing requires:

11.19 Syringomyelia. With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

11.04 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).

After a review of the medical evidence, Listing 11.19 was not met as the requirement of significant and persistent disorganization of motor function in two extremities resulting

in sustained disturbance of gross and dexterous movements, or gait and station was not demonstrated.

Lastly Listing 1.04 was reviewed and it is determined that although there is evidence of chronic pain and based upon a 2007 MRI, some bone spurring effacing the spinal cord, no current MRI was available to establish evidence of any nerve root impingement; thus, the severity requirements of this listing were not met. As no Listings were demonstrated as met, the Claimant is deemed not disabled or disabled at Step 3 thus a Step 4 analysis is necessary under 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). 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). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitation. In this case not step 4 analysis can be made as the Claimant has no past relevant work history having last worked in 1997 teaching part time at a university. Thus a step 5 analysis will be conducted.

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). The Claimant is 64 years old and, thus, is considered to be a person close to retirement age for MA purposes. The Claimant has a post-graduate education. 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).

In this case, the evidence reveals that the Claimant has medical impairments due to chronic pain, spinal bifida, Chiari Malformation, causing fluid and pressure on the brain, migraines, seizures, double vision, nausea and syringomyelia, an abnormal cavity in the spinal column, chronic fatigue and asthma.

Based upon the foregoing objective medical evidence, particularly the limitations imposed by the Claimant's treating neurologist, and in light of the limitations imposed by this doctor which include limitations on sitting, standing, and use of her hands and arms for pushing and pulling and occasionally lifting ten pounds, and even considering a seven-year-old MRI that notes significant impingement of bone spurs at that time, these limitations do not support a finding that Claimant is capable of performing sedentary work. Sedentary work requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

This Administrative Law Judge does also take into account Claimant's complaints of pain in that the diagnosis of chronic back pain with Syringomyelia does support such a claim based upon medical diagnosis and physical limitations imposed and the MRI provided. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a Claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529-416.929.

The Claimant's treating doctor notes serious restrictions due to Claimant's physical impairment related to her diagnosis. The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and are not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to objective medical testing including the MRI and clinical observations of the Claimant's treating physician that completed the DHS 49 who place the Claimant at less than sedentary. The total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the Claimant's physical impairments have a major impact on her ability to perform even basic work activities. In consideration of the foregoing and in light of the medically objective physical limitations and pain, and the fact that the Department did not present any vocational evidence to support whether any jobs exist in the national economy that the Claimant could perform given her limitations, accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a).

After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

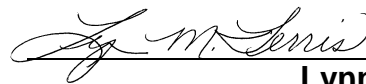
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the Medical Assistance benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is 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 shall process the Claimant's January 23, 2014 MA application and retro application (retro to October 2013) and determine if all non-medical eligibility requirements are met.
2. A review of this case shall be completed in April 2016.



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

Date Signed: **4/14/2015**

Date Mailed: **4/14/2015**

LMF / cl

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.

