

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-008749-R
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: 7/28/2015
County: KALAMAZOO

ADMINISTRATIVE LAW JUDGE: Kevin Scully

**HEARING DECISION ON REMAND
FROM CIRCUIT COURT**

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, telephone hearing was held on July 28, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and her attorney [REDACTED] of [REDACTED]. Assistant Attorney General William Morris represented the Department of Health and Human Services (Department). Witnesses appearing on behalf of the Department were [REDACTED] and [REDACTED].

ISSUE

Did the Department of Health and Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

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 March 11, 2011, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability. (Department Exhibit A, p 7)
2. On May 8, 2012, the Department determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that her impairment did not meet the durational standard. (Department Exhibit A, p 47)
3. On May 24, 2011, the Department sent the Claimant notice that it had denied the application for assistance. (Department Exhibit A, p 2)

4. On September 30, 2011, the Department received the Claimant's hearing request, protesting the denial of disability benefits. (Department Exhibit A, p 24)
5. On October 18, 2011, the Claimant's request for a hearing was dismissed.
6. On November 14, 2014, the Claimant's request for a rehearing was denied.
7. On May 20, 2015, the Claimant's case was remanded to the Michigan Administrative Hearing System by order of the 9th Circuit Court of Kalamazoo County for a hearing to determine whether the Department's finding of non-disability was proper.
8. On July 14, 2015, the Claimant's attorney and an Assistant Attorney General representing the Department stipulated that a hearing before the Michigan Administrative Hearing System would consider the issue of whether the Claimant is disabled for the purposes of Medical Assistance (MA) eligibility.
9. On July 28, 2015, the Claimant was granted a de novo hearing before the Michigan Administrative Hearing System since no evidence had been previously entered into the record with respect to a determination of disability.
10. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
11. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application and the Claimant reported that a SSI appeal is pending.
12. The Claimant was a ■-year-old woman when she applied for Medical Assistance (MA), whose birth date is June 30, 1966.
13. Claimant is 5' 0" tall and weighs 140 pounds.
14. The Claimant attended school through the 9th grade.
15. The Claimant is able to read and write and does have basic math skills.
16. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
17. The Claimant has past relevant work experience as a waitress where she was required to take orders from customers, service food and drinks, lift objects weighing up to 7 pounds, and stand for up to 5 hours at a time.

18. The Claimant's disability claim is based on diabetes, impaired vision, neuropathy, anxiety, depression, and Hepatitis C. (Department Exhibit A, p 53) (Claimant Exhibits 1 & 2)

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order using relevant federal regulations and Social Security Administration Policy Interpretation Ruling SSR 14-2p: Evaluating Diabetes Mellitus.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At Step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity"

is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant testified that she has not been employed since 2005 and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore this Administrative Law Judge finds that the Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 2

Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is not disabled.

At Step 2, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant was a [REDACTED] year-old woman when she applied for Medical Assistance (MA) that is 5' 0" tall and weighs [REDACTED] pounds. The Claimant alleges disability due to diabetes, impaired vision, neuropathy, anxiety, depression, and Hepatitis C.

The objective medical evidence indicates the following:

The Claimant has been diagnosed with diabetes mellitus, cirrhosis of the liver, pain in a joint involving the hand, and disorders of magnesium metabolism. (Department Exhibit A, p 53) (Claimant Exhibit 1)

The Claimant has been diagnosed with adjustment disorder with mixed anxiety and depression, and dysthymic disorder. The Claimant has been diagnosed with serious symptoms and serious impairments in social and occupational functioning. (Claimant Exhibit 2)

The Claimant has a lengthy history of receiving treatment in hospital emergency rooms for chronic diabetes mellitus and complications of diabetes. The Claimant also has a history of noncompliance with her recommended treatment plan for diabetes as a result of a lack of access to necessary medication and testing supplies. (Department Exhibit A) (Claimant Exhibits 1 & 2)

Blood tests support a finding that the Claimant does not suffer from kidney disease. (Department Exhibit A, p 65)

Computed tomography (CT) scans of the Claimant's right hand on March 10, 2010, revealed mild soft tissue swelling but no acute fractures, dislocations, or other abnormalities. (Department Exhibit A, p 101)

On February 1, 2011, the Claimant received inpatient treatment for a severe abscess on her back that was found to be infected. The Claimant was treated for inflammation in the subcutaneous tissues of her lumbar spine. (Department Exhibit A, p 108)

The Claimant was treated for severe cephalalgia but a computed tomography (CT) scan produced normal results. (Department Exhibit A, p 115)

An x-ray scan of the Claimant's chest revealed to evidence of acute cardiopulmonary disease. (Claimant Exhibit 2)

The Claimant was treated for left leg pain of uncertain etiology and an ultrasound examination revealed no evidence of deep vein thrombosis or superficial thrombophlebitis. (Claimant Exhibit 2)

An x-ray of the Claimant's right foot revealed no bony abnormalities but did show an indeterminate punctate calcific density plantar soft tissue space. (Claimant Exhibit 2)

The evidence on the record indicates that the Claimant's was been diagnosed with diabetes mellitus and diabetic neuropathy by treating physicians. The evidence supports a finding that her diabetes is a chronic and permanent impairment. The evidence supports a finding that her diabetic neuropathy is also a permanent condition secondary to her diabetes. The pain the Claimant suffers from as a result of her diabetic neuropathy is of a type to be expected with her medical condition. The

Claimant's impairments limit her ability to stand, cause her to suffer from nerve pain and headaches, and also cause her to suffer from increased fatigue.

This Administrative Law Judge finds a physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months. The Claimant is not disqualified from receiving disability benefits at Step 2 and the analysis will continue.

STEP 3

Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant'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 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The Claimant's impairment failed to meet the listing for anxiety under section 12.06 Anxiety-related disorders, because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation. The objective medical evidence does not demonstrate that the Claimant is completely unable to function outside the home. The objective medical evidence indicates that the Claimant suffers from serious impairments of her social and occupational functioning. The Claimant testified that she is capable of communicating through social media on a daily basis.

The Claimant's impairment failed to meet the listing for depression under section 12.04 Affective disorders, because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation or is unable to function outside a highly supportive living arrangement. The objective medical evidence indicates that the Claimant suffers from serious impairments of her social and occupational functioning. The Claimant testified that she is capable of communicating through social media on a daily basis.

Diabetes is not a listed impairment for adults in the federal regulations. The effects of diabetes, either alone or in combination with other impairments, may meet or medically equal the criteria of a listing in other affected body systems.

The Claimant's impairment failed to meet or equal a listing for diabetic neuropathy under section 11.14 Peripheral neuropathies because the objective medical evidence does not support a finding that the Claimant suffers from Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station. While the severe and chronic pain described by the Claimant is of a type that can reasonably be expected to arise from her diagnosed condition, the evidence does not support a finding that it prevents her from performing any work related activities. The Claimant testified that she is capable of preparing meals and making short shopping trips. The Claimant testified that she is capable of sweeping floors and making beds. (Department Exhibit A, p 235)

The Claimant's impairment failed to meet or equal any listing under section 2.00 Special Senses and Speech. No evidence was presented on the record that the Claimant has been diagnosed with diabetic retinopathy. The objective medical evidence does not support a finding that the Claimant's remaining vision in her better eye after best correction is 20/200 or less. (Claimant Exhibit 2)

The Claimant's impairments do not meet or equal the listing for a skin abscess under section 8.04 Chronic infections of the skin or mucous membranes because the evidence does not support a finding that she suffers from extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing treatment. The Claimant was admitted for inpatient treatment on February 1, 2011, and treated for an abscess on her back with cultures suggestive of Staphylococcus aureus (MSSA). The Claimant was treated and discharged to home treatment on February 21, 2011, in improved condition. (Department Exhibit A, p 108)

The Claimant's impairments do not meet or equal any of the listings under section 4.00 Cardiovascular system.

The Claimant's impairments do not meet or equal any of the listing under section 6.00 Genitourinary disorders.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do her past relevant work, 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 and last step.

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.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

To determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

The Claimant testified that she is capable of performing gross and fine motor skills such as showering, dressing herself, preparing meals, and shopping for groceries. The Claimant testified that she is capable of sweeping floors and cleaning a bathroom. The Claimant testified that on a typical day she communicates with others through social media.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567 and 416.967. The evidence supports a finding that the Claimant's access to necessary medication and testing supplies was limited, that these limitations did not prevent her from performing light work for an extended duration.

The Claimant has past relevant work experience as a waitress where she was required to take orders, serve drinks and food, lift objects weighing up to 7 pounds, and stand for up to 5 hours at a time. This Administrative Law Judge finds that the Claimant's prior work fits the description of light work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is unable to perform work substantially similar to work performed in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, she is not disabled. If the Claimant is not able to do other work and meets the duration requirement, she is disabled.

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).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do less strenuous tasks if demanded of her. The Claimant's testimony as to her limitations indicates that she should be able to perform light.

The Claimant was able to answer all the questions at the hearing and was responsive to the questions. The Claimant was oriented to time, person and place during the hearing.

The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

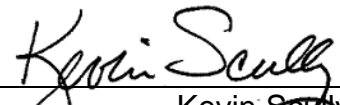
Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

The Claimant, a ■-years-old woman, a younger person, under age ■, with a limited education, has a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform light work. Medical Assistance (M.A.) is denied using Vocational Rule 201.24 as a guideline.

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 not disabled for purposes of the Medical Assistance (M.A.) benefits.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/25/2015**

Date Mailed: **8/25/2015**

KS/■

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which 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:

