

**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.: 15-009927
Issue No.: 4009
Case No.: ██████████
Hearing Date: July 20, 2015
County: Oakland-District 2

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 July 20, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████ ██████████, Eligibility Specialist, and ██████████ ██████████, Family Independence Manager.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

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 20, 2015, Claimant submitted an application for public assistance seeking SDA benefits.
2. On May 27, 2015, the Medical Review Team (MRT) found Claimant not disabled (Exhibit A, pp. 6-9).
3. On June 1, 2015, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 2-5).
4. On June 8, 2015, the Department received Claimant's timely written request for hearing.

5. Claimant alleged physical disabling impairment due to loss of balance, back and foot pain, hearing issues, hypertension, high cholesterol, mitral valve prolapse, breast cancer in remission.
6. Claimant alleged mental disabling impairment due to depression, anxiety, and loss of memory.
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].
8. Claimant graduated from high school in [REDACTED]. She can read and write in English and do functional math.
9. Claimant has an employment history of work as secretary.
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 loss of balance, back and foot pain, hearing issues, hypertension, high cholesterol, mitral valve prolapse, breast cancer in remission and mental disabling impairment due to depression, anxiety, and loss of memory. The medical evidence presented at the hearing was reviewed and is summarized below.

Notes from [REDACTED], which Claimant identified as a provider, showed that Claimant's diagnosis was major depressive disorder, recurrent episode, in full remission and she was assigned a current global assessment of functioning (GAF) score of 60 (Exhibit A, pp. 26-30, 43).

On February 12, 2015, Claimant's primary care physician completed a physical exam report, DHS-49, listing Claimant's diagnoses as lumbar radiculopathy, neck and upper back pain. The doctor observed that Claimant's gait was normal but slow, her straight leg raise was 30 degrees bilaterally, her lower back was tender, her grip was normal, and her right lower extremity was mildly weakened due to lumbar radiculopathy. The doctor noted that an x-ray of Claimant's lumbar spine showed mild degenerative changes and MRI of her cervical spine showed mild disc bulge and degenerative disease. The doctor concluded that Claimant's condition was, per Claimant, deteriorating and identified the following limitations: (i) she could frequently lift and carry up to 10 pounds and never more; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she could sit less than 6 hours in an 8-hour workday (Exhibit A, pp. 22-24).

On April 1, 2015, Claimant was examined by a doctor at the Department's request. In her physical examination of Claimant, the consulting doctor noted that there was minimal tenderness to palpation in the lower lumbar area but no obvious spinal deformity, swelling or muscle spasm noted. The doctor indicated that Claimant did not use a cane or aid for walking; was able to get on and off the examination table slowly; could tandem walk, heel walk and toe walk slowly; was able to squat to 70% of the distance and recover and bend to 80% of the distance and recover; had jamar grip strength of 15 pounds in the right and 0 pounds in the left hand; her straight leg raise was 0-50 while lying down and 0 to 90 while sitting. Claimant's range of motion were within normal limits except her lumbar spine flexion was 70 degrees (normal was 0 to 90 degrees), her forward hip flexion was 90 degrees bilaterally (normal is 0 to 100 degrees). The doctor concluded that Claimant's hypertension was well controlled; her hyperlipidemia was controlled with medication; she had a history of left breast cancer that was being followed by her primary care physician and oncologist; she had a history of mitral valve prolapse that was being followed by her cardiologist; she had balance issues in need of follow up; and she had memory issues that her primary care doctor had advised her was stress-related (Exhibit A, pp. 9-17).

On April 1, 2015, Claimant was also examined by a psychologist at the Department's request and a mental status examination report was prepared. In her physical examination of Claimant, the consulting doctor concluded that Claimant was "not presenting with any significant psychiatric symptoms, disturbance of thought, impaired memory or concentration that would affect her ability do to work related activities at a sustained pace." He diagnosed her with adjustment disorder managed with medication. (Exhibit A, pp. 18-21.)

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.

The medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 2.07 (disturbance of labyrinthine-vestibular function), 4.00 (cardiovascular system), 12.04 (affective disorders), and 12.06 (anxiety-related

disorders) were considered. 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., unable to 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). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Claimant alleges both exertional and nonexertional limitations due to her condition. She testified that she had trouble with concentration and memory; had issues with anxiety, crying, and isolating; because of her balance issue, she could not walk for long distances or stand for more than 10 minutes; she could not sit for long because of discomfort; and, because of arthritis, she could lift a gallon of milk only if she used both hands. She lived alone and was able to care for and slowly dress herself. She testified that she limited her cooking to microwaved meals and did light chores.

Documentation from Claimant's current mental health provider showed that Claimant was diagnosed with major depressive disorder, recurrent episode, in full remission. The

April 1, 2015, mental status consult, the psychologist concluded that Claimant did not have any significant psychiatric symptoms, disturbance of thought, impaired memory or concentration that would affect her ability do to work related activities at a sustained pace and diagnosed her with adjustment disorder managed with medication. The medical documentation does not support any significant mentally disabling limitations.

With respect to physically disabling limitations, both Claimant's treating physician and consulting doctor noted limitations. Claimant's doctor listed Claimant's diagnoses as lumbar radiculopathy, neck and upper back pain and noted that her gait was normal but slow, her straight leg raise was 30 degrees bilaterally, her lower back was tender, and her right lower extremity was mildly weakened due to lumbar radiculopathy. The doctor identified the following limitations for Claimant: (i) she could frequently lift and carry up to 10 pounds and never more; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she could sit less than 6 hours in an 8-hour workday. In the April 1, 2015, consulting physical examination report, the consulting doctor also noted minimal tenderness to palpation in the lower lumbar area her lumbar spine flexion was 70 degrees (normal was 0 to 90 degrees), her forward hip flexion was 90 degrees bilaterally (normal is 0 to 100 degrees). The doctor observed that Claimant did not use a cane or aid for walking; was able to get on and off the examination table slowly; could tandem walk, heel walk and toe walk slowly; was able to squat to 70% of the distance and recover and bend to 80% of the distance and recover; had jamar grip strength of 15 pounds in the right and 0 pounds in the left hand; and her straight leg raise was 0-50 while lying down and 0 to 90 while sitting. The physical examination was sufficient to support that Claimant had some back pain and restrictions to lifting that limited her exertional RFC. Based on a review of the entire record, including Claimant's testimony and the limitations identified by her treating physician, it is found that Claimant maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a) provided she has standing opportunities. See Social Security Ruling (SSR) 96-9p.

Claimant's RFC is considered at both steps four and five. 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 capable of sedentary work activities and has no significant 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 receptionist/secretary. Although such a position is sedentary, it is not likely to accommodate Claimant's need for alternate standing and sitting. Accordingly, In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Therefore, 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 [REDACTED] years old at the time of hearing and at application and, thus, considered to be a closely approaching retirement (age [REDACTED]) for purposes of Appendix 2. She is a high school graduate from [REDACTED] who can read and write in English. She has a history of unskilled work experience. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and has no significant limitations on her mental ability to perform work activities. In this case, the Medical-Vocational Guidelines result in a disability finding based on Claimant's exertional limitations.

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. Reregister and process Claimant's January 20, 2015 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: **7/29/2015**

Date Mailed: **7/29/2015**

ACE / tlf

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]