

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-009996
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 20, 2015
County: WAYNE-DISTRICT 76

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 July 20, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. The Claimant's Authorized Hearing Representative, (AHR) [REDACTED] [REDACTED] also appeared. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], 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 [REDACTED], the Claimant applied for MA-P and retro MA-P to January 2014.
2. The Medical Review Team denied the Claimant's application on [REDACTED].
3. The Department sent a Notice of Case Action on [REDACTED].
4. The Claimant's AHR requested a timely hearing on [REDACTED], as the AHR did not receive the Notice of Case Action from the Department. An Interim Order was issued [REDACTED]. New evidence was received by the undersigned and reviewed.

5. The Claimant has alleged a mental disabling impairment due to depression and bipolar disorder. The Claimant has received no treatment for her mental impairments but does take Depakote and Lexapro for bipolar disorder.
6. The Claimant alleges physical disabling impairments due to knee and joint pain due to arthritis, asthma, carpal tunnel syndrome in both hands (wears braces for this condition), and a herniated disc in the cervical spine due to an auto accident on [REDACTED].
7. At the time of hearing, the Claimant was 47 years of age with a [REDACTED] birth date. Claimant is 5'3" tall in height; and weighs 220 pounds with a BMI of 39. The Claimant is obese. The Claimant is right handed.
8. The Claimant completed an 8th grade education and was in special education classes. The Claimant's has no work experience history that would constitute substantial gainful employment. The Claimant can read and write.

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 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.

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 due to knee and joint pain due to arthritis, asthma, carpal tunnel syndrome in both hands (wears braces for this condition), and a herniated disc in the cervical spine due to an auto accident on May 21, 2014.

The Claimant has alleged a mental disabling impairment due to depression and bipolar disorder. The Claimant has received no treatment for her mental impairments but does take Depakote and Lexapro for Bipolar disorder.

A summary of the Medical Evidence follows:

A DHS 49 was completed in August 2015 and was submitted pursuant to the Interim Order issued in this case, and was received as new evidence. The form was completed by the Claimant's primary care physician. The diagnosis was herniated disc cervical spine, hypertension, and arthritis. The general assessment noted fatigue, with pain 8 out of 10 in the back. The Claimant had peripheral edema, and bilateral muscle weakness was noted with diminished reflexes. Depression was also noted. The Claimant's condition was noted as deteriorating and limitations were imposed. The Claimant could lift less than 10 pounds occasionally, and was restricted with reaching, pushing and pulling with both hands. The doctor did not complete the section regarding an assessment of Claimant's standing or sitting capacities. No medical or clinical findings were referenced to support the physical limitations.

The Claimant was seen at Eastlake Cardiovascular clinic for evaluation of chest pain. The Claimant was assessed after an EKG (which was normal). Exhibit 1, p. 33

The Claimant was admitted for a one day hospital stay on [REDACTED] due to abdominal pain. The medical social history notes crack cocaine use (1 week ago). The Claimant was started on an IV with antibiotics due to fever and chills. The Claimant was discharged with diagnoses of atypical chest pain, constipation, with abdominal pain, anemia due to chronic illness, hypertension controlled, leukocytosis – steroid induced, history of asthma and obesity. Claimant was discharged with symptoms improved.

The Claimant was seen in the ER on [REDACTED], with complaints of shortness of breath chest tightness. On examination Claimant was positive for myalgias, and negative for back pain and joint pain. There were decreased breath sounds in the lungs. The report noted heroin use one week prior. The Claimant was admitted for exacerbation of asthma and dyspnea, and possible PE (pneumonia) Notes indicate dyspnea on talking (1-2 words at a time of assessment). A lower extremity venous duplex bilateral was done with the impression noting normal lower extremity venous exam with no evidence of any deep or superficial venous thrombosis. A lung scan was also performed and noted low probability of PE based on imaging criteria. A normal echocardiogram was also noted. The Claimant was discharged two days later. Exhibit 1 pp. 71- 87

The Claimant was seen in the hospital on [REDACTED], after a rear end motor vehicle crash while the vehicle was stopped at a stop light. The Claimant complained of headache and back pain with exacerbation of preexisting back condition. On examination, a cervical collar was placed due to tenderness in the cervical and lumbar back. The Claimant was discharged with mild cervical and lumbar vertebral tenderness with a note “no results for this visit”. The diagnosis was neck strain, acute cervical spasm, osteoarthritis, neck fracture, cellulitis, herniated disc and cervical radiculopathy. During this admission a CT of the cervical spine and head/brain was performed noting for the cervical spine, mild degenerative changes noted anterior marginal osteophytosis at C5-C7, otherwise neuroforamina are felt to be widely *pain*. Impression was no acute traumatic process within the head or cervical spine. A CT of the lumbar spine was done finding no acute traumatic process involving the lumbar spine; noted degenerative changes involving S1 joints and also seen involving the Lumbar spine most notable at L 5- S 1 and L 4- L5. Claimant Exhibit A pp. 8 – 10.

The Claimant was seen at the hospital on [REDACTED] for severe pain secondary to a motor vehicle accident (MVA) with associated symptoms of headaches. The Claimant reported to the emergency room a day after a MVA. The examiner noted Claimant was positive for back pain and positive for loss of consciousness and headaches. The Claimant had normal range of motion with thoracic paraspinal TTP with spasm and tenderness and lumbar paraspinal TTP with spasm. A CT of the cervical spine noted no acute fracture identified, if there is clinical concern for occult fracture, ligamentous injury or myelopathy an MRI was recommended. The final impression was motor vehicle accident, concussion and back pain. A second CT was performed on the cervical spine and degenerative disc disease found most pronounced at C5-C6. The Claimant was discharged with pain medications. Claimant Exhibit A, pp. 14-15

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. As there was no medical evidence of a confirmed diagnosis of depression or bipolar disorder by a psychiatrist and no treatment other than testimony by Claimant of drug therapy, Listing 12.04 is not met.

Listing 1.04 was consulted because although the Claimant had complaints of neck and back pain, there was no evidence presented to review or support the listing. Specifically, no evidence of nerve root involvement, as required. Although Claimant had testified to have undergone an MRI testing, no MRI report was submitted pursuant to the Interim Order issued in this case.

Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of either Listing 12.04 or 1.04. A careful review of the medical evidence was made and it was found that the listings were not met. Therefore, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 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 limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of 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.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* 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. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs, other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* 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 (e.g., 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). 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). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

As the Claimant has no substantial gainful employment record, no finding regarding the Claimant's capability to perform past relevant work can be made. Thus, the fifth step in the sequential analysis is required.

The Claimant testified that she is able to walk a block then takes a break, and can sit for an hour or an hour and a half and then must move around. The Claimant also testified that sometimes it hurts to sit. The Claimant could stand an hour and could not squat. The Claimant could dress and bathe herself using a shower chair. The Claimant can go up and down stairs with some back and knee pain. The Claimant can cook food for herself and can do laundry, but does not perform lifting. The Claimant could braid her hair and cut an onion but did note her hands cramp due to carpal tunnel in her hands. The Claimant also testified that her feet and legs swell and are numb due to diabetes. The Claimant testified that she was restricted to lifting no weight over 5 pounds.

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 47 years old and, thus, is considered to be an individual of younger age for MA purposes. The Claimant has an 8th grade education and can read and write. 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 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). 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 alleged both physical and mental impairments. As regards the Claimant's alleged mental impairments, the Claimant has not received ongoing therapeutic treatment or any hospitalization for any of her mental impairments and presented no medical evidence to support these impairments, other than the Claimant's testimony. The available medical evidence contained in the record is devoid of any medical evidence to support these alleged impairments as regards analysis for determining residual functional capacity.

As regards the Claimant's physical impairments, although Claimant testified to ongoing back pain, the objective medical evidence in the record at best supports degenerative disc disease in the cervical spine and acute conditions as regards the lumbar spine due to the last motor vehicle accident in June 2014. As regards the DHS 49 submitted by the Claimant's doctor, a review of this document does not make it clear if the examiner is a treating doctor as the date of first examination and the exam date to complete the DHS 49 are the same. No medical findings were referenced to support the physical limitations. No laboratory, x-ray or MRI findings were referenced to support clinical impressions of deterioration or to support the limitations imposed; or the examiner's diagnosis of herniated disc in the cervical spine. Finally, no limitations were imposed as regards standing and sitting.

Based upon the foregoing objective medical evidence, there is no evidence that the Claimant would have difficulty performing unskilled work while sitting. She also has the use of her hands for cooking, bathing and dressing. 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 did consider and take into account Claimant's complaints of pain, however, the available diagnoses presented do not support such severity of claims of pain based upon the objective medical evidence provided. While the Claimant has had several motor vehicle accidents, the lack of an MRI demonstrating a condition in the spine that would cause continuing pain was not present. 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. Here the medical evidence did not support taking into account complaints of pain. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

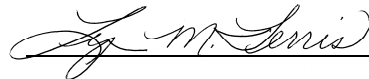
After a review of the Claimant's medical records, hospital reports, and Claimant's own testimony, Claimant has failed to establish limitations which would compromise her ability to perform sedentary work activities on a regular and continuing basis.

In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant does retain the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work. After review of the entire record, the Findings of Fact and Conclusions of Law, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is not 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 not disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

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



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

Date Signed: **9/1/2015**

Date Mailed: **9/1/2015**

LMF / hw

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.

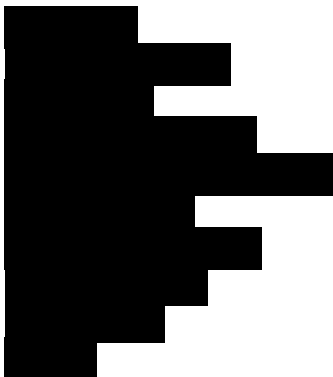
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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:

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