

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

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IN THE MATTER OF:

SOAHR Docket No. 2008-9829
DHS Req. No: 2008-10057REHD
Case No: V4015212A

██████████,

Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Claimant.

ISSUE

Did Claimant meet the disability standard for Medical Assistance (MA-P) beginning November 2004?

FINDINGS OF FACTS

This Administrative Law Judge, based upon the competent, materials and substantial evidence on the whole record, finds as material fact:

1. On January 23, 2008, ALJ Landis Y. Lain issued a Decision & Order in which the Administrative Law Judge upheld the Department of Human Services (DHS).
2. On February 22, 2008, the State Office of Administrative Hearings and Rules for DHS received Claimant's request for Rehearing/Reconsideration.
3. On April 8, 2008, the State Office of Administrative Hearings and Rules, Administrative Hearings for DHS, granted the Claimant's request for reconsideration and issued a Notice of Reconsideration to the Claimant.
4. Subsequent to the Decision and Order issued in January 2008, the State Office of Administrative Hearings and Rules received verification that the Social Security Administration (SSA) determined at the Administrative Hearings level that the Claimant met the federal

Supplemental Security Income (SSI) disability criteria beginning February 28, 2005, the date she filed her SSI application; and her combination of medical problems prevent her from sitting, standing, or walking for prolonged periods and concentrating upon tasks.

5. Claimant is a 58 year-old woman with a medical history of chronic obstructive pulmonary disease (COPD), sleep apnea, hypertension, depression, anxiety, dyslipidemia, type 2 diabetes mellitus, and obesity.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 4000.105; MSA 16.490 (15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program, which provides assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

Current legislative amendments to the Act delineate eligibility criteria as implemented by agency policy set forth in program manuals. 2000 PA 294, Sec. 604, of the statute states:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.50, the Family Independence Agency uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

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 a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920 (c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment...20 CFR 416.929 (a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)...20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b) (1) (iv).

Basic work activities are the abilities and aptitude necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, 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
- (6) Dealing with changes in a routine work setting. 20CFR 416.921 (b).

The Residual Functional Capacity (RFC) 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).

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.

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. 20 CFR 416.967 (a).

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 CCR 416.9677 (b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflects judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927 (a) (2).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920 (b).
2. Does the client have a sever impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920 (c).


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. If yes, MA is approved. 20 CFR 416.290 (d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920 (e).
5. 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, §§ 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920 (f).

SSA determined that Claimant met the federal SSI disability criteria on February 28, 2005, the date she filed her SSI application. Therefore, because of the SSA eligibility determination, it is not necessary for this ALJ to determine whether Claimant was eligible for MA-P benefits effective February 2005. (PEM, Item 260)

This ALJ finds that Claimant met the MA-P disability standard retro to November 2004. The SSA approval of Claimant's application for federal SSI benefits was based on the same combination of medical problems or severe physical impairment that Claimant had in November 2004. Therefore, the Department's disability determination for the period on November 2004 through January 2005 is reversed.

DECISION AND ORDER

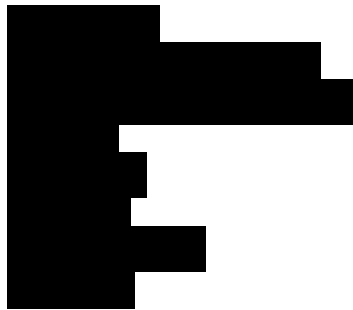
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant met the definition of medically disabled under the MA-P program beginning November 2004.


Reconsideration Decision
DHS Reg. No: 2008-9829
SOAHR Docket No: 2008-10057 REHD

Accordingly, the Administrative Law Judge's decision dated January 23, 2008 is REVERSED. The Department is ORDERED to determine whether Claimant is otherwise eligible for MA benefits beginning November 2004, and issue any retroactive MA benefits that Claimant is otherwise eligible to receive based on an application date of January 27, 2005.

/s/
Marya A. Nelson-Davis
Administrative Law Judge
for Michigan Department of Human Services

cc:



Date Signed: August 17, 2009
Date Mailed: August 17, 2009

*****Notice*****

The Claimant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.