

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2011-32070  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: August 18, 2011  
County: Wayne (82-82)

**ADMINISTRATIVE LAW JUDGE:** Robert J. Chavez

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 18, 2011, at the Department of Human Services (Department) office in Wayne County, Michigan, District 82. Claimant was represented at hearing by [REDACTED]. The Department was represented by [REDACTED].

**ISSUE**

Was the denial of claimant's application for Medical Assistance (MA-P) and retroactive MA-P benefits for lack of disability correct?

**FINDINGS OF FACT**

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

1. Claimant applied for MA-P on February 4, 2011.
2. Claimant is 50 years old.
3. Claimant has an 11<sup>th</sup> grade education.
4. Claimant is not currently working.
5. Claimant has a prior work history consisting of home help aide, janitorial, and fast food.

6. These positions were performed at the light exertional levels.
7. Claimant's job responsibilities in janitorial consisted of general cleaning, emptying garbage cans, and no indications of contact with the general public.
8. Claimant did not testify to any mental limitations with regard to work-related activities in this particular job.
9. Medical records show that in [REDACTED], claimant was discharged from the hospital with a diagnosis of cough.
10. Claimant's lungs were clear, and chest x-rays were normal; claimant was discharged and released in stable condition.
11. In [REDACTED], claimant underwent drainage of an abscess that was most likely related to repeated IV drug use.
12. Claimant had a similar abscess drain in [REDACTED]
13. Claimant also alleged asthma, back pain, shoulder and hip operations.
14. There are no medical records supporting these claims or indicating any work-related limitations from these claims.
15. Medical records do indicate possible cirrhosis, pancreatitis, and hepatitis C, but only refer to these conditions in passing and detail no work-related limitations from these conditions.
16. Claimant alleged hernia and hospital admissions numbering "6 or 7 times" since [REDACTED] but provided no evidence of these admissions.
17. Claimant did submit evidence of an abdominal mass; however, there are very few records detailing the mass, and no records showing that the mass would have a significant effect on claimant's work-related abilities.
18. Claimant returned no treating source affidavits detailing physical limitations.
19. Claimant alleged mental symptoms resulting from an affective disorder; however, claimant's most recent medical records are from [REDACTED], and there is no medical evidence that claimant is still suffering from a mental condition.
20. On February 8, 2011, the Medical Review Team denied MA-P, stating that claimant could perform past work.
21. On February 15, 2011, claimant was sent a notice of case action.

22. On May 3, 2011, claimant filed for hearing.
23. On May 27, 2011, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant was capable of performing other work.
24. On August 18, 2011, a hearing was held before the Administrative Law Judge.
25. Claimant submitted additional evidence and was scheduled for a comprehensive psychological evaluation; claimant did not attend this evaluation.
26. SHRT again denied on March 29, 2012, stating that claimant could perform other work.

### **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 Department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

Disability is defined as the inability to do any substantial gainful activity (SGA) 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.

This is determined by a five-step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five-step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps is necessary. 20 CFR 416.920.

The first step that must be considered is whether the claimant is still partaking in SGA. 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily

blind individuals for 2011 is \$1,640. For non-blind individuals, the monthly SGA amount for 2011 is \$1,000.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that claimant is not engaging in SGA and, thus, passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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
- (6) Dealing with changes in a routine work setting.

20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6<sup>th</sup> Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of some abdominal pain and abscesses caused by drug use. While there are significant questions as to whether this pain meets durational requirements, as the evidence is sparse, the Administrative Law Judge will assume it is met for the sake of argument. Furthermore, with regard to claimant's psychological symptoms, claimant's most recent records are from early [REDACTED], and claimant failed to attend a psychological examination scheduled for her; therefore, as there is no medical evidence of current psychological symptoms, the Administrative

Law Judge cannot in good faith consider those symptoms. However, for the sake of argument, claimant passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either the claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 5.00 (Digestive) and 8.00 (Skin). Claimant's condition does not meet the requirements contained in the listing. Claimant does not have organ impairment or duration required by these listings. The medical evidence is insufficient to consider these listings. Therefore, claimant cannot be found to be disabled at this step based upon medical evidence alone. 20 CFR 416.920(d). We must, thus, proceed to the next steps and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether he can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) The individual has the functional and vocational capacity for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA.

SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and

training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work-related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional nor nonexertional limitations; however, such symptoms can often affect the capacity to perform activities as contemplated above and, thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, the only impairments that are even close to sufficiently documented are abscesses, most likely caused by repeated IV drug use, and an abdominal mass that appeared to cause mild abdominal pain. Claimant also entered the hospital for a cough, but all objective diagnostic tests showed that the lungs and related systems were clear of a latent impairment. Claimant has presented no evidence of musculoskeletal or digestive problems other than some passing reference in the medical records. Medical reports, both supplied by claimant and the Department, indicate that claimant's main documentable impairment stems from mild abdominal pain.

Furthermore, claimant's allegations of psychiatric impairments are not sufficiently documented by the medical record. The most recent medical records were from [REDACTED], and there is no documentation that claimant's mental impairments persist. While claimant was scheduled for a psychiatric exam, claimant did not attend this exam.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering functions that require lifting of heavy weights and extreme physical exertion that could exacerbate pain. Claimant has some limitations with reaching and pulling, especially when significant weight is involved, but has no other manipulative limitations. Claimant has no postural limitations (e.g. stooping, bending, and crouching) and no visual limitations or communicative (hearing, speaking) limitations. Claimant has no limitations with standing, walking, or the use of her legs, except so far as she participates in physical exertion and could exacerbate abdominal pain.

Claimant testified to only being able to stand 5 minutes and walk ½ block; however, the Administrative Law Judge did not find the claimant credible in her testimony, especially when comparing claimant's testimony to the objective reports in the medical record.

Claimant's medical records did not indicate any physical restrictions with regards to work-related activities.

Claimant's PRW includes janitorial work at a stadium. This job, as typically performed and described by the claimant, required cleaning, emptying trash cans and little interaction with the public. This job did not require heavy lifting, and there was no testimony that this job required physical exertion such as might cause claimant to experience abdominal pains. There was no testimony as to whether this job required any reaching or pulling.

Claimant's medical record as a whole does not show that claimant has a physical impairment that would prevent claimant from performing this past work. Even giving the claimant the benefit of the doubt with regard to psychiatric records, a simple, unskilled,

routine job such as this one would not be significantly impaired by psychological symptoms claimant expressed.

The medical record shows that claimant is physically and mentally capable of performing her past relevant work. Therefore, claimant possesses the RFC to perform her PRW.

Therefore, given the functional requirements as stated by claimant for these jobs (which is consistent with how these jobs are typically performed), and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does retain the capacity to perform her PRW.

As claimant retains the capacity to perform PRW, the undersigned must find that claimant does not meet the requirements to be found medically disabled. As claimant does not meet the requirements to be found medically disabled, the undersigned holds that the Department was correct when claimant was found to be not disabled for the purposes of the MA-P program.

As claimant has been found not disabled at Step 4, no further analysis is required.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not disabled for the purposes of the MA program. Therefore, the decision to deny claimant's application for MA-P was correct.

Accordingly, the Department's decision in the above-stated matter is, hereby, **AFFIRMED**.



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**Robert J. Chavez**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: June 5, 2012

Date Mailed: June 6, 2012

**NOTICE:** Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at  
Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

RJC/pf

cc:

