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

IN THE MATTER OF:

[redacted]

Reg. No.: 2012-66005
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: March 5, 2013
County: Kalkaska

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge upon the Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which govern the administrativ e hearing and appeal process. After due not ice, an in-person hearing was commenced on March 5, 2013, at the Kalkaska County DHS office. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [redacted] [redacted]

ISSUE

Whether the Department of Human Se rvices (the department) properly denied Claimant's application for Medicaid, Retro-MA and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

(1) On June 7, 2012, Claimant applied for MA, Retro-MA and SDA.

(2) On July 31, 2012, the Medical Review Team denied Claimant's application indicating Claimant was capable of performing other work. SDA was denied due to lack of duration. (Depart Ex. A, pp 1-2).

(3) On August 3, 2012, the department caseworker sent Claimant notice that MA/Retro-MA and SDA had been denied.

(4) On September 26, 2012, Claim ant filed a request for a hearing to contest the department's negative MA/Retro-MA/SDA action.

(5) On November 15, 2012, the State Hearing Review Team again denied Claimant's application indicating that Claimant was capable of performing past relevant work as a housekeeper. (Depart Ex. B, pp 1-2).

(6) Claimant has a history of chronic obstructive pulmonary disease (COPD), hypertension, chronic back pain, pericardial effusion, hypothyroid, hyperlipidemia, and Type 1 diabetes.

(7) On February 22, 2012, Claimant presented to her primary care provider with a cough which had worsened, and hypertension which was getting worse. On exam, she had myalgia. Auscultation was described as mild bilateral wheezing. She was diagnosed with benign essential hypertension and acute bronchitis and prescribed Ziac. (Depart Ex. A, pp 131-133).

(8) On April 3, 2012, Claimant presented to the emergency room with what she believed to be a chest cold. Initially, Claimant had an oxygen saturation of 89% with a respiratory rate of 24 and was placed on CPAP. BNP was 145. She was given 40 mg of IV Lasix and nitroglycerin. She was also given Solu- Medrol and nebulizer treatments and transferred to [redacted] for further evaluation and treatment. On arrival at [redacted] Claimant's chest x-ray revealed an enlarged heart and she was sent for an urgent echocardiogram which ended up showing an effusion. At the time of admission, Claimant was diagnosed with cardiomegaly with effusion of uncertain etiology. Claimant also had uncontrolled hypertension and untreated insulin-dependent mellitus. Claimant had an oxygen qualification during her admission and qualified for 2 liters of oxygen at rest and 3 liters with exercise. She was also discharged home with an Albuterol metered-dose inhaler and Advair discus. Her pericardial effusion was likely viral myocarditis. She had serial echocardiograms and had a persistent moderate-to-large pericardial effusion; however, there was no tamponade present. Amyloidosis was a concern and a fat pad biopsy was taken along with serum protein and urine protein electrophoresis which only showed a glomerular proteinuria pattern. There were no EKG changes. The echocardiogram on 4/4/12 showed a normal ejection fraction of 60%, left ventricular hypertrophy, moderate-to-large pericardial effusion essentially unchanged without tamponade. The echocardiogram on 4/5/12 showed a moderate-to-large-sized circumferential pericardial effusion with no hemodynamic significance. She did have a significant hypertension throughout her admission. At the time of discharge on April 9, 2012, her blood pressures had stabilized and were within normal limits. For her diabetes, she had been previously untreated. She had an A1c of 12.6. She was discharged on Lantus 20 mg every night along with Metformin 500 mg twice daily. She was to check her blood sugars 3 times daily before meals and at night. At the time of discharge, she was administering her own insulin and was familiar

with the glucometer and testing. Final discharge diagnoses: acute exacerbation of COPD; pericardial effusion; hypertension; untreated diabetes type 2, now insulin dependent; hyponatremia; tobacco abuse; hypothyroidism; hyperlipidemia; and leukocytosis. (Depart Ex. A, pp 5-9).

(9) On April 13, 2012, Claimant's transthoracic echocardiogram showed a normal LV ejection fraction and global LV systolic function; increased echogenicity of the LV myocardium raising the possibility of amyloidosis; left ventricular ejection fraction was 60 to 65%; moderate concentric left ventricular hypertrophy; pseudonormal pattern of LV diastolic filling; elevated mean left atrial pressure; severely dilated left atrium; mild mitral valve regurgitation; and moderate sized pericardial effusion. There was no evidence for tamponade. (Depart Ex. A, pp 78-79).

(10) On April 22, 2012, Claimant presented to the emergency department with the right side of her tongue swelling. It was noted Claimant had been a recent admission to [redacted] discharged on April 9, 2012, for acute exacerbation of COPD with pericardial effusion, hypertension, and diabetes. She was started on a host of medications to include Lisinopril at that time. She was discharged with 3 liters of home oxygen which she is at now. The right side of her tongue was minimally swollen when compared to the left. She was given 80 mg of Solu-Medrol IM and 50 mg Benadryl at her request. She was monitored for approximately 2 hours and she noted that the feeling of her tongue swelling had decreased. Subsequent physical exam revealed stable size of her right tongue without enlargement. Claimant was discharged home and instructed to discontinue the Lisinopril for the time being and follow-up with her primary care provider. (Depart Ex. A, pp 86-88).

(11) On April 26, 2012, Claimant saw her primary care physician for follow-up after her emergency room reaction to Lisinopril. The symptoms were reported as severe, occurring constantly in the tongue. Relieving factors included stopping the Lisinopril. She stated the symptoms improved once off the Lisinopril. She was diagnosed with improved benign essential hypertension, COPD, and angioedema. (Depart Ex. A, pp 138-140).

(12) On May 4, 2012, Claimant followed up with her primary care physician regarding the results of her recent pericardial effusion requiring drainage. She had persistent effusion but without re-accumulation after pericardial drain removed. New allergies were also added, Lisinopril and Tetracycline. On exam, she had a II/VI systolic ejection murmur. Regarding pericardial effusion, her condition was stable. The echocardiogram showed a moderate sized pericardial effusion. Her hypertension had worsened since she was last seen and her dose of Norvasc was increased and she was on oxygen for her COPD. (Depart Ex. A, pp 97-98).

(13) Claimant is a 54 year old woman whose birthday is [redacted]. Claimant is 5'4" tall and weighs 187 lbs. Claimant graduated from high school. Claimant last worked in March, 2012.

(14) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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 Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program which provides financial 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

> 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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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(a). 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 recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

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).

In Claimant's case, the chronic back pain, shortness of breath requiring oxygen and other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

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 <u>not</u> 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 severe 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, Sections 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).

Claimant has not been employed since March, 2012; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical and mental limitations upon her ability to perform basic work activities.

Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration 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. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective medical findings, that Claimant cannot return to her past relevant work because the rigors of working as a laundry attendant are completely outside the scope of her physical and mental abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon Claimant's:

(1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;

(2) age, education, and work experience, 20 CFR 416.963-.965; and

(3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Based on Claimant's vocational profile (approaching advance age, Claimant is 54, has a high school education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of her June 7, 2012, MA/Retro-MA/SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's June 7, 2012, MA/Retro-MA and SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The department shall review Claimant's medical condition for improvement in March, 2014, unless her Social Security Administration disability status is approved by that time.

3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 18, 2013

Date Mailed: March 18, 2013

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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

VLA/las

cc: [redacted]