

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2012-73174  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: November 29, 2012  
County: Holland

**ADMINISTRATIVE LAW JUDGE:** Vicki L. Armstrong

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on November 29, 2012, in the Holland county DHS office. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department ) included Assistant Payments Supervisor [REDACTED] and Assistant Payments Worker [REDACTED].

**ISSUE**

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA?

**FINDINGS OF FACT**

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

- (1) On April 26, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On June 15, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that her non-severe impairment lacked duration. (Dept Ex. A, pp 1-2).
- (3) On July 2, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On August 23, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On October 10, 2012, the State Hearing Review Team (SHRT) found Claimant condition is improving or expected to improve within 12 months from the date of onset or from the date of surgery. (Dept Ex. B, pp 1-2).
- (6) Claimant has a history of a myocardial infarction requiring stenting, coronary artery disease (CAD), hypertension, dyslipidemia, back pain, arthritis, hand problems, and vision problems.
- (7) On January 27, 2012, Claimant was admitted to the hospital with a diagnosis of acute inferior wall myocardial infarction. She underwent left heart catheterization on 1/27/12. This revealed the left main to be normal. The LAD had tubular stenosis in the midportion of about 80% and distally about 90%. The circumflex had ostial narrowing of approximately 80%. Ramus intermedius branch was 20-30%. The right coronary artery had an 80% midvessel stenosis followed by a 99% lesion. This was successfully intervened upon with angioplasty and the placement of a drug-eluting stent. Ejection fraction was 60%. She was discharged in stable condition on January 30, 2012. (Dept Ex. A, pp 20-28).
- (8) On March 1, 2012, Claimant consulted with a cardiologist concerning her coronary artery disease (CAD). She had no chest discomfort suggestive of ischemia. She was treated acutely with stent. Her ECG was reviewed revealing her sinus rhythm was slow. RSR in V2. Low QRS voltage in precordial leads. Moderate inferior repolarization disturbance, consider ischemia or LV overload. Abnormal ECG. (Dept Ex. A, pp 50-52).
- (9) On April 13, 2012, Claimant followed up with her cardiologist. Her blood pressure remained elevated at 140/90 and she did not tolerate the ACE inhibitors. She was diagnosed with unspecified essential hypertension, unchanged from last visit, and inadequately controlled. (Dept Ex. A, pp 48-49).
- (10) On April 23, 2012, Claimant went to the emergency department complaining of vomiting. She had an IV established and was given a liter of normal saline and a gram of Tylenol orally and 4 milligrams of Zofran by IV. She had good resolution of her nausea. She was discharged on April 24, 2012 in stable condition with a diagnosis of pyelonephritis and vomiting. (Dept Ex. A, pp 31-33).
- (11) On April 27, 2012, Claimant was again admitted to the hospital with severe sepsis, a urinary tract infection versus pyelonephritis, an acute kidney injury, a renal mass and coronary artery disease status post recent cardiac stenting. The abdomen and pelvis computed tomography scan revealed multiple apparent cysts scattered throughout the liver. A more focal multi-septated/multiloculated liver abnormality was again noted within the right lobe of the liver posteriorly towards the dome. The renal ultrasound showed complex cystic or solid lesion in the upper pole of the right kidney. Differential includes benign and malignant disease. Simple

cysts in the right kidney at the inter pole level. Normal left kidney. Normal bladder. Hepatic cysts abnormality including a dominant irregularity bordered 2.8 cm cystic lesion. She was discharged home on May 3, 2012 with a final diagnosis of a urinary tract infection, fever/tachycardia suggestive of systemic inflammatory response syndrome (SIRS), hepatic cysts versus possible abscess, and renal nodule, nonspecific. ( Dept Ex. A, pp 34-44).

- (12) Claimant is a 64 year old woman whose birthday is [REDACTED]. Claimant is 5'0" tall and weighs 120 lbs. Claimant completed high school.
- (13) Claimant was appealing the denial of Social Security disability benefits 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).

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 CFR 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 ongoing and unpredictable shortness of breath, numbness in feet, circulation problems, back pain 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 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 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 2008; 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 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 the 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 welder are completely outside the scope of her physical 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 the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your 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 (6<sup>th</sup> 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 retirement age, Claimant is 64, high school graduate with an unskilled work history), this Administrative Law Judge finds Claimant's MA and Retro-MA are approved using Vocational Rule 202.04 as a guide. Consequently, the department's denial of her April 26, 2012, MA and Retro-MA 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 eligibility purposes.

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

1. The department shall process Claimant's April 26, 2012, MA/Retro-MA 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 February, 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.

/s/

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

Date Signed: February 12, 2013

Date Mailed: February 12, 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:



