

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 2013-34491
Issue No.: 2009
Case No.: ██████████
Hearing Date: July 22, 2013
County: Macomb (36)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 conducted in ██████████, Michigan on July 22, 2013. Claimant appeared and testified. ██████████, ES, appeared on behalf of the Department of Human Services (Department).

It is noted that Claimant was previously represented by L & S Associates, Inc., who withdrew its representation of Claimant prior to the hearing. Claimant testified that she wished to proceed with the hearing without a representative.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

FINDINGS OF FACT

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

1. Claimant submitted an application for public assistance seeking MA-P on August 2, 2012.
2. On December 11, 2012, the Medical Review Team (MRT) determined that Claimant was not disabled.

3. The Department notified Claimant of the MRT determination on December 14, 2012.
4. On March 8, 2013, the Department received Claimant's timely written request for hearing.
5. On May 31, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant is employed as a pet care giver, earning [REDACTED] an hour and working more than 50 hours per week.
7. Claimant suffers from chronic shingles, COPD, arthritis and depression.
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CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Tables ("RFT").

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

"Disability" is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

2013-34491/SCB

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b)

In this case, Claimant testified credibly that she is employed as a pet care giver, earning \$7.40 an hour, and working more than 50 hours per week.

20 CFR 416.971 states in part, "The work, without regard to legality, that you have done during any period in which you believe you are disabled may show that you are able to work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find that you are not disabled." 20 CFR 972 (a) states that substantial work activity is "work activity that involves doing significant physical or mental activities." A person who earned more than \$1,040.00 (non-blind) per month in 2013 is considered to be engaged in substantial gainful activity. 20 CFR 416.974

As Claimant is performing substantial gainful activity, earning more than \$1,040.00 per month, a finding of not disabled is directed.

The Administrative Law Judge would note that this finding does not minimize the seriousness of Claimant's impairment. The rules only examine whether Claimant is exceeding the substantial gainful activity threshold.

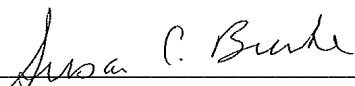
Accordingly, this Administrative Law Judge concludes that Claimant is not disabled for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.



Susan C. Burke
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 9, 2013

Date Mailed: August 12, 2013

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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing 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

cc:

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[REDACTED]
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