

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

IN THE MATTER OF:

[REDACTED]  
[REDACTED]  
[REDACTED]

Reg. No.: 2013-55666  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: October 31, 2013  
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on October 31, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED], the Claimant's Authorized Hearing Representative, also appeared. [REDACTED], FIM, also appeared on behalf of the Department of Human Services.

**ISSUE**

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance program (MA-P)?

**FINDINGS OF FACT**

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

1. The Claimant submitted an application for public assistance seeking MA-P and retro (December 2012) MA-P benefits on February 11, 2013.
2. On April 3, 2013 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1).
3. The Department notified the Claimant of the MRT determination on April 13, 2013.

4. On June 21, 2013, the Department received the Claimant's timely written request for hearing. (Exhibit 1)
5. On August 22, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. The Claimant was approved by the Social Security Administration for SSI on May 1, 2013, the date of the application approval; however, the Claimant seeks medical assistance retroactive to December 2012.
7. The Claimant alleged physical disabling impairments due to neuropathy in both feet and in her fingertips and lung mass with severe emphysema, renal failure, low back pain with bilateral radiating pain in both legs.
8. The Claimant alleged mental disabling impairment(s) due to severe anxiety, claustrophobia and depression.
9. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date was 5'5" in height; and weighed 85 pounds.
10. The Claimant has a high school education with a GED.
11. The Claimant's past employment included electrical job estimating, janitorial work, and packaging clothing for shipment.
12. At the time of the hearing the Claimant was not substantially gainfully employed and is currently not working.
13. Claimant's limitations have lasted or are expected to last for 12 months or more.

### **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 of Human Services (DHS or 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 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.

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 is not currently working. Claimant testified credibly that he is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

The severity of the Claimant’s alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b)(c).

A severe impairment is an impairment expected to last twelve 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 second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimis* hurdle" in the disability determination. The *de minimis* standard is a provision of a law that allows the court to disregard trifling matters.

In this case the Claimant presented medical evidence which is summarized below.

The Claimant was hospitalized in [REDACTED] secondary to an overdose of an opiate and at the time was intubated and had renal failure. The medical records provided regarding this hospitalization noted a BMI of 16.1 and the Claimant weighed 88 pounds. The Claimant was released from this hospitalization in stable condition.

The Claimant had a second hospitalization in [REDACTED] which was an admission for a questionable overdose and potential suicide. At the time Claimant was psychiatrically examined the impression was depressive disorder, rule out adjustment disorder with mixed emotions, rule out prescription drug abuse. The GAF score at that time was 30. Recommendation was that the Claimant follow up with outpatient treatment. However the Claimant testified at the hearing that she had no insurance. On [REDACTED] the Claimant's admission diagnosis noted again renal failure as well as acute respiratory failure chronic and severe emphysema and a mass of the mediastinum. At the time of her admission the Claimant's BMI was 15.3 and her weight was 82 pounds.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that she has significant physical limitations upon her ability to perform basic work activities such as sitting, standing, lifting,

climbing pushing, pulling, reaching, carrying or handling. 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. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant's medical record will 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.

This Administrative Law Judge consulted listing 5.08. Weight loss due to any digestive disorder despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.

The Claimant's medical records establish that listing 5.08 or its equivalent is met. The Claimant's medical documentation showed that she has met this listing as her calculated BMI was significantly less than 17.50 based upon the two hospital admissions referenced above. In addition it is noted that at the hearing the Claimant credibly testified that she currently weighed 88 pounds and the undersigned can attest to the fact that Claimant was extremely thin and appeared very unhealthy.

Claimant's credible testimony established that she has difficulty bending and squatting and climbing stairs has a result of the chronic and severe emphysema. The Claimant also testified that she had no appetite and thus it is expected that her chronic low BMI will continue.

In this case, this Administrative Law Judge finds, based upon the objective medical evidence and diagnostic testing and the Claimant's testimony regarding her current weight and inability to eat due to loss of appetite, it is determined that Claimant is considered presently disabled at the third step of the sequential evaluation. Claimant meets the listing for 5.08, or its medical equivalent. It is noted that the Claimant's disability onset date is determined to be December 2012.

With regard to steps 4 and 5, when a determination can be made at any step as to the Claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is disabled for the purposes of MA and SDA programs. Therefore, the decisions to deny Claimant's application for MA -P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby REVERSED.

1. The Department is ORDERED to initiate processing the Claimant's MA -P application dated February 11, 2013 with retro MA-P to December 2012 consistent with the application and award required benefits, provided Claimant meets all non-medical standards required for eligibility as well.



Lynn M. Ferris  
Administrative Law Judge  
for Maura Corrigan  
Department of Human Services

Date Signed: November 13, 2013

Date Mailed: November 13, 2013

**NOTICE OF APPEAL:** 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

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The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-07322

LMF/cl

cc:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]