

**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.: 2013-21367
Issue No.: 2009
Case No.: ██████████
Hearing Date: April 25, 2013
County: Wayne (43)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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, telephone hearing was held on Thursday, April 25, 2013, from Detroit, Michigan. Claimant appeared and testified. Claimant was represented by ██████████ of ██████████. Participating on behalf of the Department of Human Services (Department) was ██████████.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On November 15, 2013, this office received the SHRT decision which found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) 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 benefits on November 2, 2012.
2. On November 29, 2012, the Medical Review Team ("MRT") found Claimant not disabled. (Exhibit 1, pp. 6, 7)

3. On December 5, 2012, the Department notified Claimant of the MRT determination. (Exhibit 1, pp.4, 5)
4. On January 4, 2013, the Department received Claimant's written request for hearing. (Exhibit 1, p. 2)
5. On February 20th and November 8, 2013, the SHRT found Claimant not disabled. (Exhibit 2)
6. Claimant alleged physical disabling impairments due to back pain, leg pain, shortness of breath, chronic obstructive pulmonary disease (COPD), hypertension, chest pain, congestive heart failure (CHF), coronary artery disease (CAD), acid reflux, breast mass, diabetes, and vertigo.
7. Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, Claimant was 47 years old with a [REDACTED], birth date; was 5'10" in height; and weighed 240 pounds.
9. Claimant has a limited education with vocational training as a certified nursing assistant (CNA).
10. Claimant employment history consists of work as a CNA, general laborer, and dietary aid.
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 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).

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 416.913. 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 (i.e. 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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found.

20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b). Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972. Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a). Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not working therefore is not involved in substantial gainful activity. Accordingly, Claimant is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. 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 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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.

Id.

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).

In the present case, Claimant alleges disability due to back pain, leg pain, shortness of breath, COPD, hypertension, chest pain, CHF, CAD, acid reflux, breast mass, diabetes, and vertigo.

On [REDACTED], Claimant was admitted to the hospital with complaints of chest pain and shortness of breath. Cardiac catheterization revealed left main artery stenosis of 72% with significant disease. Coronary artery bypass grafting x3 (CABG) was performed without complication; however, subsequently had mucous plugging, urgent BAL, and developed pneumonia. Claimant was discharged on [REDACTED].

On [REDACTED] chest x-rays revealed post CABG changes, low lung volumes, and thoracic spondylosis.

On [REDACTED] Claimant was admitted to the hospital with a left breast mass and atypical chest pain. Despite prescribed treatment, the breast lesion worsened such that, due to the lack of improvement, neoplasm was suspected. An ultrasound and mammogram showed possible inflammatory breast cancer or mastitis. Claimant was instructed to follow-up with the surgery clinic as an outpatient. Claimant was discharged on July 6th with the diagnoses of left breast mass, CAD, diabetes mellitus, uncontrolled hypertension, and deep vein thrombosis (DVT).

On [REDACTED], Claimant attended a consultative evaluation. Claimant was found to be limited with carrying, lifting, and pushing (no more than 12 pounds), with no strenuous activity. Claimant was "disabled from doing much of any activities at this time until clearance of the left ventricular function is back to normal." The impressions were

osteoarthritis and spinal disorder, noting Claimant was able to ambulate unassisted and hypertensive cardiovascular disease.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that she does have physical limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, continuously for a period of twelve months or longer; therefore, 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of chest pain status post CABG x3, low lung volumes, thoracic spondylosis, left breast mass, diabetes mellitus, uncontrolled hypertension, CAD, osteoarthritis, and hypertensive cardiovascular disease.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 9.00 (endocrine disorders), and Listing 13.00 (malignant neoplastic diseases) were considered in light of the objective medical evidence. There was no evidence of major joint dysfunction, fracture, or nerve root impingement nor was there evidence of ongoing treatment, despite prescribed treatment, for any respiratory system impairment. Claimant continues to suffer chest pain status post heart attack and CABG x3; however, the evidence was insufficient to meet a cardiovascular impairment. Similarly, the evidence was insufficient to meet the intent and severity requirement of a digestive or endocrine disorder. Regarding Claimant's left breast mass; evidence must conclusively show advance carcinoma, recurrent carcinoma, or carcinoma with metastases to the supraclavicular or infraclavicular nodes, to ten or more axillar nodes, or with distant metastases. Ultimately, although the objective medical records establish physical impairments, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 3.

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related

symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

In this case, the evidence confirms treatment/diagnoses of back pain, leg pain, shortness of breath, COPD, hypertension, chest pain, CHF, CAD, acid reflux, breast mass, diabetes, and vertigo. Claimant testified that she can walk short distances; lift/carry about 10 pounds on a good day; sit for ½ hour; stand for less than 2 hours; and is unable to bend and/or squat. The consultative evaluation found Claimant physically limited, noting she was disabled until cleared by her cardiologist. After review of the entire record to include Claimant's credible testimony, it is found that, at this time, Claimant is unable to maintain the physical and mental demands necessary to perform even sedentary work as defined by 20 CFR 416.967(a).

The fourth step in analyzing a disability claim requires an assessment of Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

Claimant's prior work history primary consists of work as a care provider whose duties included lifting up to 50 pounds; preparing food, bathing clients, and a great deal of standing and/or walking. Claimant's other employment required standing and/or walking. In consideration of Claimant's testimony and referring to the Occupational Code, Claimant's prior employment as a CNA is classified as semi-skilled medium work while the other employment is considered unskilled, light. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In light of the entire record, to include the Claimant's testimony and RFC (see above), it is found that Claimant is unable to perform past relevant work.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience would be considered to determine whether an adjustment to other work could be made. 20 CFR 416.920(4)(v). At the time of hearing, Claimant was 47 years old thus considered to be a younger individual for MA-P purposes. Claimant has a limited education. Disability is found if an individual is unable

to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, the objective findings confirm treatment/diagnoses of back pain, leg pain, shortness of breath, COPD, hypertension, chest pain, CHF, CAD, acid reflux, breast mass, diabetes, and vertigo. The evidence shows that Claimant remains disabled until clearance of the left ventricular function is back to normal. During the hearing, evidence showed that as of [REDACTED] Claimant remained on a 24 hour release of nitroglycerin. Otherwise, the evidence place Claimant at sedentary activity level. Ultimately, in consideration of the entire record, to include the combination of impairments and Claimant's credible testimony, it is found that at this point, Claimant is unable to physically perform on a sustained basis, sedentary activity. Accordingly, Claimant is found disabled at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds Claimant disabled for purposes of the MA-P benefit program.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the November 2, 2012, MA application, to include any applicable retroactive months, to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.

3. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review Claimant's continued eligibility in January 2015, in accordance with Department policy.



Colleen M. Mamelka
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 6, 2013

Date Mailed: December 6, 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.

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

2013-21367/CMM

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

CMM/tm

cc:

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