

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

**IN THE MATTER OF:**

██████████  
██████████  
██████████

Reg. No.: 2013 27595  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: June 17, 2013  
County: Wayne (15)

**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 June 17, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ the Claimant's Authorized Hearing Representative, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ Medical Contact Worker.

**ISSUE**

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

**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 March 13, 2012 Claimant applied for MA-P.
2. On January 14, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated January 17, 2013 denying the Claimant's MA-P application. Exhibit 1

4. On February 4, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On April 9, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on June 24, 2013 ordering the claimant's Authorized Hearing Representative to submit a DHS 49 and a [REDACTED] [REDACTED] from the claimant's treating cardiologist. And a DHS 49 from the claimant's current pulmonary doctor.
7. On November 19, 2013 the State Hearing Review Team denied claimant's request and found claimant not disabled.
8. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED] [REDACTED]. Claimant's height was 5'7" and weighed 160 pounds. The claimant has lost 20 pounds within the last six months.
9. Claimant completed the high school and had several years of college.
10. Claimant's prior work experience consists of a work as a student help desk assisting students with technical problems, working as a real estate agent,
11. Claimant alleges physical disabling impairments due to uncontrolled high blood pressure, shortness of breath, cardiac fibrillation, congestive heart failure COPD, sarcoidosis and a tumor in her abdomen.
12. Claimant's impairments have lasted or are expected to last for 12 months' duration or more.

### **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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits

based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are

used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

The Claimant alleges physical disabling impairments due to uncontrolled high blood pressure, shortness of breath cardiac fibrillation, congestive heart failure, COPD, sarcoidosis and a tumor in her abdomen.

A summary of the claimant's medical evidence presented at the hearing and the new evidence presented follows.

The claimant was admitted to the hospital on [REDACTED] [REDACTED] with complaints of high blood pressure and heart. At the time she presented claimant had a slight headache with intense pain at base of her neck. The clinical impressions on discharge were hypertension, uterine fibroid, coronary atherosclerosis and chronic airway obstruction. The claimant was discharged and arrangements were made for her to see a new primary care physician.

A medical examination report was completed by the claimant's cardiologist on [REDACTED] [REDACTED]. The doctor had treated the claimant since [REDACTED]. The current diagnosis was atrial tachycardia, fibrillation, NSTMI, sarcoidosis and COPD. The exam note showed shortness of breath and nodules in the lungs. The claimant was positive for heart palpitations and cardiomegaly. The examiner noted the claimant was deteriorating and imposed limitations of sitting less than eight hours in a work day, standing less than two hours in an eight hour workday, occasionally lifting 20 pounds. There were no limitations with regard to the claimant's ability to use her hands or her arms or feet and legs. The claimant was capable of meeting her needs in the home. A [REDACTED] [REDACTED] was provided and noted functional assessment indicating slight limitation of physical activity comfortable at rest, ordinary physical activity results in fatigue, palpitation, dyspnea, or anginal pain. The therapeutic assessment was also Class C and noted that physical activity should be moderately restricted and more strenuous efforts should be discontinued. The exam also noted that the patient had atrial tachycardia requiring ablation. The impressions were history of SPT status post successful ablation. History of sarcoidosis and following up with rheumatologist. Uncontrolled blood pressure. Patient noted as drug compliant. The report further notes that the head and neck examination were unremarkable. A CT of the claimant's lungs was performed; the impression was no evidence of acute pulmonary embolism, focal scarring in the media left upper lobe, small bilateral thyroid nodules, fluid collection or cystic mass in the left paraspinal region to the left of C-5 vertebral body, consider MRI of thoracic spine. A chest x-ray was also given due to unspecified chest pain. The impression was cardiomegaly without pulmonary vascular congestion, no significant change since April 2012.

The claimant was seen for high blood pressure on [REDACTED] [REDACTED] in the emergency room. The claimant was treated and released. At that time her heart rate was significantly elevated but her elevation was resolved. The EKG did note tachycardia and ablation was scheduled for an inpatient ablation.

The claimant was admitted on [REDACTED] with the diagnosis of supraventricular tachycardia, specifically left atrial tachycardia. Secondary diagnosis was atrial fibrillation, hypertension, pulmonary sarcoidosis and COPD. After treatment the claimant's heart rate resolved by the date of discharge. It was noted that the claimant needed ablation outpatient for left atrial tachycardia. The discharge summary did note congestive heart failure with an ejection fraction of 40% to 45%. The claimant was discharged on an ace inhibitor, beta blocker, Plavix and Zocor.

The claimant was seen in the hospital for chest pain from [REDACTED] through [REDACTED]. At the time of her admission with regard to her heart, the testing noted normal sinus rhythm, normal ECG when compared to ECG of [REDACTED] no significant change. The claimant was noted to have mild cardiomegaly. The claimant was discharged in stable condition.

The claimant was admitted for a five day hospital stay on [REDACTED] for a non-ST elevation myocardial infarction status post-cardiac catheterization. On [REDACTED] the claimant had a coronary angioplasty with right and left coronary angiogram with a final result of normal epicardial coronary arteries. At the time of discharge the claimant was discharged home in stable condition.

Here, Claimant has satisfied requirements as set forth in steps one, two, as Claimant is not employed and her impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 4.00 cardiovascular system (4.05 Recurrent Arrhythmias and 3.00 respiratory system (3.01 Chronic Pulmonary Insufficiency) were examined in light of the medical evidence presented, however the listings were not met. Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do past relevant work.

In the present case, Claimant has been diagnosed with physical impairments due to uncontrolled high blood pressure, shortness of breath, cardiac fibrillation, congestive heart failure, COPD, sarcoidosis and a tumor in her abdomen.

Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treating physician noted that Claimant would be able to stand and walk for less than 2 hours in an 8-hour day, occasionally lifting 20 pounds. There were no limitations with regard to the claimant's ability to use her hands or her arms or feet and legs. The claimant was capable of meeting her needs in the home. A [REDACTED] [REDACTED] [REDACTED] was provided and noted functional assessment indicating slight limitation of physical activity comfortable at rest, ordinary physical activity results in fatigue, palpitation, dyspnea, or anginal pain. The therapeutic assessment was also Class C and noted that physical activity should be moderately

restricted and more strenuous efforts should be discontinued. The exam also noted that the patient had atrial tachycardia requiring ablation as of [REDACTED]

Claimant credibly testified to the following symptoms and abilities: the claimant indicated that when grocery shopping she could only do so by use of a scooter due to shortness of breath and fatigue. The same symptoms occurred when walking or attempting to climb stairs. The claimant indicated she could only drive a car for 15 to 20 minutes. The Claimant could not walk more than a block without taking a rest, she could stand for 5 to 10 minutes, and could sit for 20 minutes but needed to keep her feet elevated due to swelling. The claimant could bend at the waist backward and to the side. Claimant also testified that occasionally she cannot walk due to swelling in her legs. The current medications that the claimant is prescribed also cause dizziness making her reluctant to drive. Claimant testified she could carry 5 pounds in weight. The claimant's testimony was deemed credible.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment performing a student help desk assisting students with technical problems, and working as a real estate agent. In her last job, she became hospitalized shortly after beginning the job due to heart problems. Given the Claimant's limitations with walking and standing and sitting imposed by her cardiologist, and her other limitations with walking and climbing stairs, the Claimant's previous jobs require abilities and capabilities that based on the limitations presented cannot be any longer achieved by the claimant. Therefore it is determined that the claimant is no longer capable of past relevant work. Thus a Step 5 analysis is required 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the claimant's impairment(s) prevent the 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 her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have

the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was ■ years old and, thus, considered to be an individual of advanced age for MA-P purposes. The Claimant has a high school education with some college, however most of her jobs have been unskilled to semi-skilled and her skills are determined to be not transferable. Currently, the claimant has been restricted by her cardiologist who has treated her for two years and is very familiar with her limitations such that she is restricted with respect to standing and walking less than 2 hours in an 8-hour workday and sitting less than 6 hours in an 8-hour workday. 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).

The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physician.

After a review of the entire record, including the Claimant's credible testimony and medical evidence presented, and the objective medical evidence provided by the Claimant's treating cardiologist who places the Claimant at less than sedentary activity level, it is determined that the total impact caused by the physical impairments suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments have a major impact on her ability to perform even basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

### **DECISION AND ORDER**

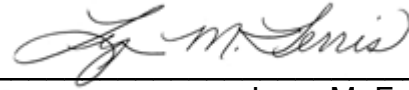
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of March 13, 2012.

Accordingly, the Department's decision is hereby REVERSED

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 is ORDERED to initiate a review of the application dated March 13, 2012 if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for December 2014.



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

Date Signed: December 17, 2013

Date Mailed: December 17, 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

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]  
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