

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201352569  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: December 19, 2013  
County: St. Clair County DHS

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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 December 19, 2013, from Port Huron, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

**ISSUE**

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

**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 February 20, 2013, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On March 18, 2013, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined she is capable of performing other work despite her impairments.
3. On March 21, 2013, the Department sent the Claimant notice that it had denied the application for assistance.
4. On June 7, 2013, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On August 13, 2013, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits.
6. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
7. The Claimant is a 47-year-old woman whose birth date is [REDACTED]
8. Claimant is 5' 3" tall and weighs 237 pounds.
9. The Claimant is a high school graduate and attended college. The Claimant is able to read and write and does have basic math skills.
10. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
11. The Claimant has past relevant work experience in retail sales, which is considered unskilled work.
12. The Claimant has past relevant work experience managing employees at multiple work locations.
13. The Claimant has the residual functional capacity to perform light work.
14. The Claimant's disability claim is based on chronic obstructive pulmonary disease (COPD), hypertension, osteoarthritis, fibromyalgia, asthma, anxiety, traumatic ischemic attacks.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under

the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

### STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

### STEP 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 not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 47-year-old woman that is 5' 3" tall and weighs 237 pounds. The Claimant alleges disability due to chronic obstructive pulmonary disease (COPD), hypertension, osteoarthritis, fibromyalgia, asthma, anxiety, and traumatic ischemic attacks.

The objective medical evidence indicates the following:

A treating physician diagnosed the Claimant with tobacco abuse, hypertension, asthma, chronic obstructive pulmonary disease (COPD), and gastroesophageal reflux disease (GERD).

The Claimant was admitted for inpatient treatment on February 9, 2012, for an acute transient ischemic attack, a hemiparetic migraine, hypertension, chronic obstructive pulmonary disease (COPD), gastroesophageal reflux disease (GERD), depression, and anxiety. The results of an echocardiogram, a cranial computed tomography (CT) scan, diagnostic imaging of the Claimant's heart and chest, a carotid duplex Doppler scan, and magnetic resonance imaging (MRI) examinations all produced negative results. The Claimant was discharged on February 11, 2012, after her condition had improved.

The Claimant was admitted for inpatient treatment on June 20, 2012, and her treating physician diagnosed her with an acute transient ischemic attack. A computed tomography (CT) scan of the Claimant's brain on June 20, 2012, revealed normal results with the possibility of demyelination. A treating physician found no acute cardiopulmonary process from an x-ray scan of the Claimant's heart. The Claimant was discharged on June 22, 2012, after all symptoms had been resolved.

The Claimant was admitted for inpatient treatment on January 29, 2013, where cardiac enzyme tests were negative and a computed axial tomography (CT) scan revealed no brain abnormalities. A treating physician diagnosed the Claimant with a transient ischemic attack (TIA), recurrent angina, hypertension, depression, and hyperglycemia. A stress test produced negative results. An ultrasound revealed no significant cardiac stenosis. An x-ray scan confirmed the diagnosis of COPD. A stress test echocardiogram on January 30, 2013, was negative for stress-induced ischemia. The electrocardiography (EKG) portion of the stress test was negative for ischemia and the Claimant's exercise tolerance was found to be below average. A computed tomography (CT) scan of the Claimant's brain on January 29, 2013, revealed normal findings. An ultrasound examination of the Claimant's heart on January 29, 2013, revealed atheromatous plaquing greater on the left internal carotid artery that is approaching moderate narrowing. Diagnostic imaging of the

Claimant's cervical spine revealed straightening of the cervical spine related to patient positioning and muscle spasms.

A treating physician found the Claimant to have a forced vital capacity measured in liters of air at body temperature and pressure saturated (LBTSP) of 1.54 before a bronchodilator and 1.63 after, and a Forced expiratory volume in 1 second measured in liters of air at body temperature and pressure saturated (LBTSP) of 1.83 before a bronchodilator, and 1.68 after.

The Claimant suffers from constant and severe nerve pain and takes pain medication 3 to 5 times each day that can cause drowsiness.

The Claimant smokes cigarettes on a daily basis.

A treating physician noted that the Claimant requires assistance to meet her needs in her home including assistance with laundry, housekeeping, and meals.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months.

### STEP 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.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The Claimant's impairment failed to meet the listing for chronic obstructive pulmonary disease or asthma under section 3.02 Chronic pulmonary insufficiency because the objective medical evidence does not support a finding of Forced expiratory volume in 1 second measured in liters of air at body temperature and pressure saturated (LBTSP) less than 1.15. The objective medical evidence does not support a finding of forced vital capacity measured in liters of air at body temperature and pressure saturated (LBTSP) less than 1.35. The objective medical evidence does not support a finding that the Claimant suffers from asthma attacks requiring physician intervention at least once every two months, or at least six times a year.

The Claimant's impairment failed to meet the listing for osteoarthritis and fibromyalgia under section 1.02 Major dysfunction of a joint because the objective medical evidence does not demonstrate that the Claimant's impairment involves a weight bearing joint resulting in inability to ambulate effectively, or an impairment of an upper extremity resulting in inability to perform fine and gross movements effectively.

The Claimant's impairment failed to meet the listing for anxiety under section 12.06 Anxiety-related disorders, because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of his activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation. The objective medical evidence does not demonstrate that the Claimant is completely unable to function outside his home.

The Claimant's impairment failed to meet the listing for traumatic ischemic attack under section 4.04 Ischemic heart disease because the objective medical evidence does not contain the results of an exercise tolerance test consistent with the listing. The Claimant's treating physician reported that the Claimant's exercise tolerance is below average without providing objective medical evidence supporting that conclusion. The Claimant has received inpatient treatment for several ischemic episodes, but the objective medical evidence does not support a finding that these episodes required revascularization or were not amenable to revascularization. The objective medical evidence does not support a finding of significant narrowing of non-bypassed arteries despite a finding that the Claimant lacks the ability to independently initiate, sustain, or complete activities of daily living.

The Claimant's impairment failed to meet a listing for hypertension under section 4.00 Cardiovascular disease. Hypertension generally causes disability through its effects on other body systems and it will be evaluated by reference to the specific body systems affected. The objective medical evidence does not support a finding that the Claimant's impairments caused or aggravated by hypertension, individually or in combination, meet or equal a listing in the federal regulations.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

#### STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do his past relevant work, 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 and last step.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform light work or sedentary work as defined in 20 CFR 404.1567 and 416.967.

The Claimant has past relevant work experience as a retail sales person. The Claimant has other past relevant work experience supervising employees at multiple locations. The Claimant's prior work fits the description of light work. The Claimant's work skills are transferrable towards skilled work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is unable to perform work substantially similar to work performed in the past.

#### STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, she is not disabled. If the Claimant is not able to do other work and meets the duration requirement, she is disabled.

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 dock et 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 and 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).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do less strenuous tasks if demanded of her. The Claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

The Claimant was able to answer all the questions at the hearing and was responsive to the questions. The Claimant was oriented to time, person and place during the hearing.

The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Claimant is 47-years-old, a younger person, under age 50, with a high school education and above, and a history of skilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work or light work, and Medical Assistance (MA) is denied using Vocational Rule 20 CFR 202.22 as a guide.

It should be noted that the Claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The objective medical evidence supports a finding that the Claimant's smoking aggravates her impairments with respect to chronic obstructive pulmonary disease (COPD) and asthma.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant  disabled  not disabled for purposes of the Medical Assistance (M.A.).

**DECISION AND ORDER**

Accordingly, the Department's determination is  **AFFIRMED**  REVERSED.

/s/ \_\_\_\_\_  
Kevin

\_\_\_\_\_  
Scully  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: December 30, 2013

Date Mailed: December 30, 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

KS/hj

cc:

