

**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 39646
Issue No.: 2009
Case No.: ██████████
Hearing Date: July 29, 2013
County: Wayne County DHS (55)

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 and in person hearing was held on July 29, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████, the Claimant's Authorized Hearing Representative also appeared. Participants on behalf of the Department of Human Services (Department) included ██████████, Assistance Payments 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 November 20, 2012, Claimant applied for MA-P and retro MA-P (August 2012).
2. On January 29, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR a notice of the Notice of Case Action dated February 5, 2013 denying the Claimant MA-P application. Exhibit 1

4. On March 29, 2013, Claimant's AHR submitted to the Department a timely hearing request.
5. On June 14, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on August 5, 2013 and new evidence was obtained. The new evidence was sent to the SHRT on September 23, 2014 and the SHRT sent the matter back without any decision regarding August, September and October 2012.
7. The Medical Review Team approved the Claimant for MA-P on March 11, 2013 retro to November 2012. (February 2013 application)
8. Claimant at the time of the hearing [REDACTED] years old with a birth date of [REDACTED]. Claimant was 5'4" and weighed 235 pounds. Claimant's BMI was 40.
9. Claimant completed education through the 11th grade.
10. Claimant has no employment history.
11. Claimant's limitations have lasted for 12 months and are expected to continue for 12 months or more.
12. Claimant alleges physical disabling impairments due to several strokes, shortness of breath, leg and chest pain, chronic heart failure, obstructive coronary artery disease, hypertension, acute coronary syndrome, obesity, and chronic kidney disease, stage III.
13. The Claimant has alleged mental disabling impairments due to depression and anxiety as well as hearing voices and seeing things that are not there.
14. Claimant has significant limitations on physical activities

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.

As the Claimant was approved by the MRT as disabled as of November 2012 the only period in question regarding the current application dated November 20, 2012 is whether the Claimant is deemed disabled for the retroactive months of August, September and October 2012.

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).

Claimant alleges physical disabling impairments due to several strokes, shortness of breath, leg and chest pain, chronic heart failure, obstructive coronary artery disease, hypertension, acute coronary syndrome, obesity, and kidney disease.

The Claimant has alleged mental disabling impairments due to depression and anxiety as well as hearing voices and seeing things that are not there.

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

As the Claimant was approved by the MRT as disabled as of November 2012 the only period in question regarding the current application dated November 20, 2012 is whether the Claimant is deemed disabled for the retroactive months of August, September and October 2012.

A DHS 49 examination was completed by the Claimant's treating doctor on July 23, 2013. The diagnosis based upon the examination was hypertension, hyperlipidemia, history of CVA and coronary artery disease, ovarian cyst, chronic kidney disease, gout and low back pain. The exam noted tenderness in lower lumbar spine bilateral. The Claimant was evaluated as stable. Limitations were imposed which included frequently lifting less than 10 pounds and occasionally 10 to 20 pounds, the Claimant could perform only with her right hand simple grasping, reaching pushing/pulling, and fine manipulating. The Claimant could not perform these tasks with the left hand due to CVA. The Claimant could not operate foot pedals or leg controls with either foot. The examining doctor's completion of the form with respect to standing and walking is contradictory as all three boxes are checked. This form completion regarding standing and walking is inconsistent with the finding that Claimant is not capable of operating foot controls with either foot and that she needs assistance with house work. The claimant was evaluated as requiring assistance with household chores. The examiner noted continued left sided residual weakness and left upper extremity. The Claimant was evaluated as stable and that these restrictions would last more than 90 days.

The Claimant was seen by a heart and vascular consultant on August 16, 2013. At the time of the visit the exam noted history of coronary artery disease with stent to LAD and RCA in August 2012 and LHC in February 2013 with patent stents otherwise non obstructive coronary artery disease, hypertension, HLD, CKD, morbid obesity, and diastolic coronary heart failure. At the time of the exam Claimant reported chest wall tenderness upon moving or by pressing on chest. LVEF ejection fraction was 50%, grade 1 diastolic dysfunction.

On August 18, 2012 the claimant was seen at the hospital with muscle spasm affecting abdominal muscles and lower extremities and chest pain. Noted increased swelling in lower extremities. Complaint of shortness of breath and very fatigued. The Claimant based upon creatine and bun levels was referred for a nephrology consult. The report notes a history of angioplasty of intracranial vessels, 2009, intracranial vascular stents in 2009, arteriography of cerebral arteries and intra thoracic vessels. The Claimant was admitted. This was the second admission in a year for chest pain. No catheterization had been done due to severely depressed renal function. The testing noted that the claimant had chronic anemia, and was treated for hyperlipidemia. At the

time a history of 4 strokes was noted. She did have a cardiac catheterization while hospitalized with mild right stenosis and second lesion in the left anterior descending artery. The cardiologist consultation notes lesions could be stented and also undergo a surgical revascularization to the left anterior descending artery with a vein graft to the right coronary artery. At the time of this consultation the doctor advised with or without stents, the continued risk of renal insufficiency was likely and possible dialysis in the future and that she would require cardiac surgery. The Claimant was hospitalized for 7 days.

The Medical evidence indicates the following procedures have been performed. percutaneous coronary angioplasty, 2012; insertion of non-drug eluting coronary stent(s) 2012; intravascular imaging of coronary vessels, 2012; insertion of one vascular stent, 2012; procedure on single vessel, 2012; coronary arteriography using two catheters, 2012; Emergency department visit for evaluation and management , percutaneous angioplasty or artherectomy of intracranial vessels 2009, percutaneous insertion of intracranial vascular stent(s), arteriography of cerebral arteries, 2009 and arteriography of other intra thoracic vessels, 2009. The Claimant also had a cardiac catheterization in February 2013.

A consultative psychiatric examination was conducted on February 25, 2013. At the time of the exam the Claimant was attending therapy at Team Mental Health for 6 months, (no records available). Examiner concluded low self-esteem with motor activity low and no motivation and some insight. Speech was blocked, affect was blunted. Diagnosis was Depressive disorder and cognitive disorder, rule out depressive disorder, with a GAF of 45 with prognosis fair to guarded. The claimant also was deemed not able to manage own benefit funds. The exam noted that Claimant has short-term memory problems. Claimant also demonstrated some cognitive deficiency during the sensorium and mental capacity exam.

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

In addition Listings 4.02 and 12.04 were reviewed to determine if the Claimant's conditions met the listing. Ultimately it was determined that the Claimant's impairments do not meet either listing as set forth in Appendix 1, 20 CFR 416.926. Listings 4.02 Chronic Heart Failure requires the following to meet the listing.

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or

2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

a. Dyspnea, fatigue, palpitations, or chest discomfort; or

b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or

c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or

d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

Based upon the precise requirements of listing 4.02 it is determined that the Claimant's medical evidence does not support meeting the listing although her conditions are severe and serious. Likewise listing 12.04 Affective Disorders was also examined and it is determined that the Listing was not met as the consultative examination provided was not sufficient to support the all requirements of the listing. Also considered was the fact that no psychiatric treatment records were provided. Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with high blood pressure, chronic heart failure, obesity, dizziness and shortness of breath, low back pain and chronic

Kidney disease(stage 3). Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than a couple of blocks slowly, and was required to stop due to shortness of breath. The Claimant could stand 5 to 10 minutes and sit only 5 to 10 minutes due to hip pain. The claimant indicated that she could carry less than 8 pounds but only for a short distance. She also indicated that she was experiencing leg pain due to gout. These restrictions are supported by her family practice treating doctor's evaluation referenced above. The medical evidence of record indicates that since 2012 the Claimant has had a chronic heart failure diagnosis since 2012 and the two most recent hospitalizations, resulted in stenting and catheterization. The Claimant also uses a cane.

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 has no past employment and therefore no assessment can be made with regard to 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 that exist in significant numbers in the national economy that 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 that 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).

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 49 years old and thus is considered a younger individual for MA-P purposes. The Claimant has an 11th grade education and has been restricted with limitations on using her hands and arms on the left side due to CVA, she needs assistance with household chores and was evaluated as capable of lifting/carrying less than 10 pounds frequently, and is obese with a BMI of 40. The list of Claimant medical problems and procedures are numerous. The Claimant was approved by the medical Review Team on March 11, 2013 and effective November 2012. This Decision therefore, based upon an earlier application only covers the period August, through October 2012 as previously mentioned. 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 Department has provided no such evidence.

After a review of the entire record, including the Claimant's credible testimony and medical evidence presented, and the objective medical evidence, particularly the medical treatment records and the numerous stenting and catheterizations performed as well as the Claimant's other conditions, and the physical evaluations done by the Claimant's doctor, as well as imposition of limitations, and a BMI of 40 it is determined that the total impact caused by the physical impairment suffered by the Claimant place her at less than sedentary.

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. In addition, the Claimant's evaluation by her treating physician considered her condition to be to be stable but she was also deemed in need of assistance with household chores and imposed significant limitations. After a review of the entire record, including the Claimant's testimony and medical evidence presented, and the objective medical evidence provided by the Claimant's treating physician who places the Claimant at less than sedentary, 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.

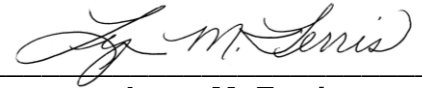
DECISION AND ORDER

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

Accordingly, the Department's determination is AFFIRMED 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 shall process the November 20, 2012 application for Medical Assistance and retroactive application for Medical Assistance (August, September and October 2012 and shall determine the Claimant's non-medical eligibility for benefits including Michigan residency. (August, September and October 2012)
2. The Department shall complete a review of this case in April 2015.



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

Date Signed: April 18, 2014

Date Mailed: April 18, 2014

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

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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