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

IN THE MATTER OF:

Reg. No.:	2014-32236
Issue No.:	2009; 4009
Case No.:	
Hearing Date:	July 17, 2014
County:	Kalamazoo

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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, a 3-way telephone hearing was held on July 17, 2014, from Lansing, Michigan. Claimant personally appeared and testified and was represented by , of . Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist/Hearing Facilitator

ISSUE

Whether the Department properly denied Claimant's application for Medical Assistance (MA), Retroactive Medical Assistance (Retro-MA) and State Disability Assistance (SDA)?

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 October 23, 2013, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.

(2) On December 15, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA and SDA for lack of duration. (Dept Ex. A, pp 10-11).

(3) On December 17, 2013, the Department notified Claimant that her application was denied.

(4) On March 10, 2014, Claimant filed a request for a hearing to contest the Department's negative action.

(5) On May 23, 2014, the State Hearing Review Team (SHRT) found Claimant was not disabled based on the medical evidence of record indicating that Claimant's condition is improving or expected to improve within 12 months. (Depart Ex. B).

(6) Claimant has a history of depression, anxiety, posttraumatic stress disorder, encephalopathy, liver cirrhosis, cervical cancer, asthma, borderline diabetic, arrhythmia, gastroesophageal reflux disease, jaundice, ascites and esophageal varices.

(7) On [redacted], Claimant was brought to the emergency department by a child protective services (CPS) worker with a large burn to the upper left abdomen. Claimant tripped and landed on a space heater a couple of days ago. The CPS worker was requesting a psychiatric evaluation of Claimant. (Dept Ex. A, pp 618-635).

(8) On [redacted], Claimant went to the emergency department complaining of shortness of breath. She stated that she had been coughing and had difficulty coughing up any phlegm. She was diagnosed with acute sinusitis. (Dept Ex. A, pp 636-672).

(9) On [redacted], Claimant presented to the emergency department with "overmedication" and a fall, with a history of PTSD, depression and anxiety. She stated that that she had been taking a lot of Xanax lately. She was admitted and a CT scan of the brain was obtained, showing no abnormality. She was found to have abnormal liver function tests and subsequent CT abdomen and pelvis confirmed the findings of cirrhosis with early portal venous hypertension, mild intraperitoneal ascites and diffuse mesenteric edema. Claimant's ascites were in too small of a quantity to be tapped. She was evaluated by psychiatry who ruled out suicidal intentions and cleared her for discharge. She was also seen by a gastroenterologist who noticed the cirrhosis was likely due to alcohol. She was also found to have mildly elevated ammonia and confusion that resolved after starting lactulose. Claimant was discharged on [redacted], with a diagnosis of encephalopathy, increased ammonia level, elevated liver function tests, anemia, ascites, cirrhosis of the liver, abdominal pain, chest pain, oral thrush, tobacco use, depression, anxiety, borderline diabetes mellitus and an upper respiratory infection. (Dept Ex. A, pp 96-443).

(10) On [redacted], Claimant presented to the hospital with a history of depression, anxiety, PTSD and liver cirrhosis diagnosed last admission with discharge on 10/15/13. She presented to the emergency department with complaints of abdominal pain, nausea, and abdominal distension. She had recently been admitted for encephalopathy and been seen by psychiatry and GI. Psychiatry had seen Claimant for depression and anxiety with possible abuse of Xanax. She had been cleared by them for discharged with recommended outpatient follow up and EGD OP. It has

also been suspected that her liver disease could be caused by ETOH dependence. Last ultrasound was done on [redacted] and she did not have enough fluid to have a paracentesis done. On exam, she appeared to be somnolent, most likely related to her use of Xanax. CT of the abdomen showed hepatic cirrhosis with portal hypertension and small line of ascites increased over [redacted]. She was admitted for uncontrolled abdominal pain. She underwent diagnostic and therapeutic paracentesis which greatly relieved her discomfort. Claimant was stabilized for discharge with a note that she was at a high risk for readmission. She was discharged on [redacted], with a diagnosis of ascites, cirrhosis of liver, oral thrush, depression, anxiety, acute encephalopathy, anemia, hepatic cirrhosis, portal hypertension and mild protein malnutrition. (Dept Ex. A, pp 26-94, 445-516).

(11) On [redacted], Claimant presented to the emergency department with complains of large volume hematemesis. She had a history of esophageal varices status post most recent banding on [redacted]. She was found to be tachycardic and hypotensive with intact mentation. The following problems were addressed during her hospitalization: upper GI bleed-bleeding esophageal varices and portal hypertensive gastropathy seen on EGD on [redacted], status post ethanolamine injection; acute blood loss anemia-status post 2 units PRBC transfused-Hb at discharge 8.2mg/dl; cirrhosis of liver with portal hypertension and esophageal varices-started/continued lactulose, aldactone, lasis and Inderal; abdominal pain with some distension-IR consulted for paracentesis, ultrasound revealing insufficient fluid to perform procedure; encephalopathy, hepatic-mental status at baseline-ammonia 75; thrombocytopenia-chronic, appeared stable. Claimant was discharged on [redacted], with a diagnosis of esophageal variceal bleeding, status post enthanolamine injection on [redacted], liver cirrhosis possibly alcohol induced and acute on chronic anemia. (Claimant's Ex. pp 5-10).

(12) On [redacted] Claimant was admitted for an altered mental status and possible narcotic overdose. She has a history of depression, anxiety, PTSD, esophageal varices related to cirrhosis and recent hospitalization for GI bleeding presenting within less than 24 hours after discharge from the emergency department secondary to AMS, improved with narcan. Related acute onset of feeling shake and not right. This occurred approximately 1 hour after first dose of MSIR. Ammonia level slightly elevated. Admitted to neurovascular unit under IMHS. Her initial presentation was concerning for narcotic overdose. Improved with narcan with a history of benzodiazipine overdose. Her ammonia level was slightly elevated on admission and improved during her hospital stay. Claimant was discharged on [redacted], with a diagnosis of altered mental status of unclear etiology, likely multifactorial due to narcotics and an elevated ammonia level. The discharging physician indicated Claimant was a high risk for readmission. (Claimant's Ex. pp 11-16).

(13) On [redacted] Claimant was admitted for treatment of acute encephalopathy. Claimant had longstanding pain issues and had been previously admitted for encephalopathy. She improved with supportive measures. Claimant was discharged on [redacted], with a diagnosis of encephalopathy and cirrhosis of the liver. (Claimant's Ex. pp 1-4).

(14) On [redacted], Claimant presented to the emergency department with worsening abdominal pain and confusion. She had a recent hospitalization for a GI bleed. She has had chronic abdominal pain since October. She was diagnosed with acute encephalopathy, suspected multifactorial etiology in the setting of hepatic cirrhosis plus polypharmacy/narcotics. She was admitted for similar symptoms in February. (Claimant's Ex. pp 24-27).

(15) On [redacted], Claimant went to the emergency department complaining of shortness of breath, left sided chest pain, and right upper quadrant pain. She was hospitalized and discharged home yesterday but is currently staying in a garage and is homeless. She has chronic renal failure. Her companion noted some intermittent confusion which the physician opined is consistent with her encephalopathy. Her x-ray revealed emphysema and splenomegaly. She was mildly tachycardic. Based on her encephalopathy, left-sided chest pain and shortness of breath she was admitted to the hospital. (Claimant's Ex. pp 42-50).

(16) Claimant is a 44 year old woman whose birthday is [redacted].

(17) Claimant is 5'0" tall and weighs 130 lbs.

(18) Claimant has a high school equivalent education.

(19) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq*., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or 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 the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

> Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:
>
> (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 to make appropriate mental adjustments, if a mental disability is being 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 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c). If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

(1) Medical history.

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, X-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include –

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 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 and other sedentary criteria are met. 20 CFR 416.967(a). 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 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 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 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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is <u>not</u> required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

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 ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

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. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. 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, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Finding of Fact #6-#18 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, her physical impairments meet or equal Listing 5.05(A):

5.05(A) Chronic Liver Problems: Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood.

With regards to the Claimant's physical impairments, this Administrative Law Judge has carefully considered all the evidence of record in light of the requirements of sections 5.05(A) (chronic liver problems). The evidence shows Claimant's physical disorders satisfy the diagnostic criteria of the above listing, including the transfusion of at least 2 units of blood

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA and SDA programs. Consequently, the Department's denial of her October 23, 2013, MA/Retro-MA and SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

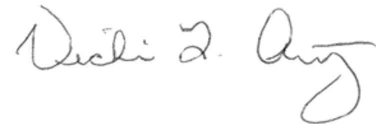
Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Claimant's October 23, 2013, MA/Retro-MA and SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The Department shall review Claimant's medical condition for improvement in July, 2015, unless her Social Security Administration disability status is approved by that time.

3. The Department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 22, 2014

Date Mailed: July 22, 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

VLA/las

cc: