

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

**IN THE MATTER OF:**

████████████████████  
██  
██

Reg. No.: 2014 32691  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: July 30, 2014  
County: Wayne County DHS (18)

**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 July 30, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. A witness, ██████████ also appeared for the Claimant. ██████████, of ██████████, the Claimant's Authorized Hearing Representative also appeared. 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 July 18, 2013, Claimant applied for MA-P and retro MA-P (May 2013).
2. On December 13, 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 December 19, 2013, denying the Claimant MA-P application. Exhibit 1

4. On March 10, 2014, Claimant's AHR submitted to the Department a timely hearing request.
5. May 21, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. Claimant, at the time of the hearing, was 54 years old with a birth date of [REDACTED] [REDACTED] Claimant was 5' and weighed 63 pounds. In the last sixth months or less, the Claimant has lost 10 pounds. Claimant's current BMI is 12.3 as of the hearing.
7. Claimant completed a high school education.
8. Claimant has employment history working as a cleaning person for a motel.
9. Claimant's limitations have lasted for 12 months and are expected to continue for 12 months or more.
10. Claimant alleges physical disabling impairments due to high blood pressure/hypertension, lack of appetite, no teeth, pain in lower calves, COPD, chronic lower back pain and broken pelvis.
11. The Claimant has alleged mental disabling impairments due to depression and anxiety with panic attacks with loss of sleep.
12. 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.

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 high blood pressure/hypertension, lack of appetite, no teeth, pain in lower calves, COPD, chronic lower back pain and broken pelvis with BMI of 12.3.

The Claimant has alleged mental disabling impairments due to depression and anxiety with panic attacks with loss of sleep.

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

At the time of the hearing, the Claimant weighed 63 pounds. As this was a telephone hearing, those persons present with the Claimant in the hearing room were requested to

describe the Claimant for the undersigned. The Department described the Claimant as appearing very small, and frail, very emaciated and looks sad and appears to look like an older woman in the body of a child with no muscle mass apparent.

The Claimant was seen on October 16, 2013 for a consultative examination and was found to weigh 69 pounds. The weight loss was due to anxiety, nausea. The impression was hypertension at goal with medication. COPD on inhalers, probable arthritis involving shoulder, back, hips and knees with chronic pain, range of motion is decreased. Hyposthenia with progressive weight loss. She weighed 73 pounds one month ago and now she weighs 69 pounds. Etiology is uncertain and needs further evaluation. Panic disorder with associated anxiety. The BMI for this examination using the formula provided in Listing 5.08 was 14.25.

A mental status exam was also performed on October 16, 2013 by a consultative examiner. The examiner diagnosis was acute grief reaction secondary to death of mother last week. Adjustment disorder with mixed emotional features, alcohol abuse, and anti-social personality disorder. Prognosis was fair. Noted not capable of managing her own benefits funds. The GAF score was 51.

On February 17, 2014, the Claimant was seen by her Family Health Center and weighed 74 pounds. (BMI 14.45), She was also seen on December 17, 2013 and November 18, 2013, at which time she weighed 76 pounds (BMI 14.84). The medical records provided establish the Claimant's weight as 76 pounds from May 23, 2013, ongoing. Additional records from February 2013 and December 2012 demonstrate the Claimant's weight to be 73 pounds and 75 pounds, respectively.

Here, Claimant has satisfied requirements as set forth in steps one and 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, the Claimant's impairments are found to meet a listing. Listing 5.08 Weight Loss due to Digestive Disorder. The listing requires ***Weight loss due to any digestive disorder*** despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period. The Claimant's medical records do establish a BMI of less than 17.50 for more than six consecutive months, and is ongoing and currently is 12.3 well below the BMI threshold to meet the listing. Given the Claimant's grave weight loss and lack of body mass, the Claimant's current physical condition is deemed to meet the medical equivalent of Listing 5.08.

It is noted that the Claimant continues to consume alcohol and smoke. The records do indicate that she has cut down on alcohol consumption. It is also determined that although the Claimant continues to consume alcohol, it is not deemed material as Claimant's current heart condition would not significantly improve with complete alcohol cessation, as the weight loss has been persistent.

Based upon these functional limitations and the medical evidence presented it is determined that the Claimant has demonstrated that Listing 5.08 or its medical equivalent is met and, therefore, is found disabled at Step 3 with no further analysis required.

**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 July 18, 2013 application for Medical Assistance and retro-active application for Medical Assistance (May 2013), and shall determine the Claimant's non-medical eligibility for benefits including Michigan residency.
2. The Department shall complete a review of this case in August 2015.



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

Date Signed: August 14, 2014

Date Mailed: August 14, 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

LMF/tm

cc:

[REDACTED]  
[REDACTED]  
[REDACTED]  
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