

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002833
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: September 03, 2014
County: Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 **September 03, 2014**, from **Lansing**, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED], [REDACTED] Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Family Independence Manager.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On August 15, 2013, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On November 5, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On November 21, 2013, the Department notified Claimant of the MRT determination.
4. On February 26, 2014, a copy of the determination notice was sent to Claimant's Authorized Representative, [REDACTED]
5. On May 22, 2014, the Department received Claimant's timely written request for hearing.
6. On June 5, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.

7. Claimant alleged physical disabling impairments of seizures and uterine fibroids.
8. Claimant alleged mental disabling impairments due to depression.
9. At the time of hearing, Claimant was 37 years old with a [REDACTED], birth date; was 5'2" in height; and weighed 165 pounds.
10. Claimant completed some college and has a work history of child care provider, toddler teacher, preschool teacher, and child care assistant.
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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). 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 make appropriate mental adjustments, if a mental disability is 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; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to

do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity. Therefore, Claimant is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples 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.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to seizures, uterine fibroids and depression.

Records from Claimant's doctor's office from October 26, 2012 to August 14, 2013, document diagnosis and treatment of a seizure disorder. The records indicate the seizures are recurrent and complex partial type. Claimant was noted to be compliant with medication and that Keppra as ordered by U of M was working better. Claimant was not to drive and disabled to work per the August 14, 2013, office visit note.

Claimant was seen at U of M on July 8, 2013, regarding seizures that started in September 2012. A long term video EEG monitoring was to be scheduled. Claimant was to not drive for 6 months after a seizure with loss of awareness and was not to work at heights, climb a ladder, handle heavy or sharp machinery or stand near pools of fire.

Claimant was admitted to U of M July 30, 2013 to August 2, 2013, for long term EEG monitoring. On August 1, 2013, a typical clinical seizure was captured. Claimant reported that she does not have postictal confusion, has incontinence with some but not all episodes, and that there is no pattern or trigger. Claimant stated they occur up to 3 times per day to twice per month. Claimant's restrictions included no driving until cleared once she has had no seizures or spells with loss of consciousness for at least 6 months, as well as no operating heavy machinery, working at heights or near water, swimming alone, working with shop objects or near hot stoves or grills.

A November 19, 2013, letter from the neurologist documents that Claimant's condition was poorly controlled despite medication modifications.

Records from the Claimant's doctor's office from September 9, 2013 through June 19, 2014, documented diagnosis and treatment of seizure disorder and depression. Claimant's reported last seizure was 5 weeks before the June 19, 2014 office visit.

Records from the neurologist's office from March 24, 2014 and July 22, 2014, document diagnosis and treatment of localization related focal epilepsy with complex partial seizure. The July 22, 2014, office visit note included a description of Claimant's usual seizure episodes, which included duration of 2-10 minutes with short postictal confusion. Claimant used to have a high seizure frequency, on average once per week. At the time of the March 24, 2014 visit, Claimant's seizures had decreased to every 2-3 weeks and often one seizure a day for 2-3 days. Another medication was added, but at that time it was noted the seizure frequency was quite high and prevented holding employment. At the time of the July 22, 2014 visit, it was noted that Claimant had been seizure free for 2 months with the last seizure occurring in May 2014.

A July 3, 2014, DHS-49 Medical Examination Report from the neurologist documented a diagnosis of focal seizures with impaired awareness. It was noted Claimant continues to have monthly seizures. Lifting limitations were up to 10 pounds frequently and 25 pounds occasionally. There were no standing, walking, sitting limitations. Claimant would be limited with using her extremities for repetitive actions when she is going through a seizure. Similarly, it was marked that there were no mental limitations unless a seizure. A July 3, 2014, DHS-54A Medical Needs form noted Claimant was prohibited from driving as well as working with sharp/heavy tools, at heights, near hot surface or deep water.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of seizures and depression.

Based on the objective medical evidence, considered listings included: 11.00 Neurological and 12.00 Mental Disorders.

11.03 Epilepsy - nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly in spite of at least 3 months of prescribed

treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

The medical records indicate that Claimant's seizures began in September 2012 and she likely met or equaled listing 11.03 for a closed period. However, the frequency of seizures was documented to decrease some by March 2014 and then substantially decrease by July 2014. The June/July 2014 treatment records from the neurologist and the primary doctor's office both indicated Claimant's last reported seizure was sometime in May 2014. The July 3, 2014 DHS-49 Medical Examination Report indicates the ongoing seizures are only monthly. Accordingly, the Claimant can be found disabled at Step 3 for a closed period through May 2014. Ongoing disability will be considered at the subsequent steps.

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The evidence confirms recent diagnosis and treatment of seizure disorder and depression. Claimant's testimony indicated she can walk 45-60 minutes, stand 45-60 minutes, sit 2 hours, and lift up to 30 pounds. Claimant testified she took antidepressant medication when she was going through a stage, the medication helped and she has weaned off of it. Claimant testified she is still having uncontrolled frequent seizures, which includes seizures after the July 22, 2014 doctor's appointment. Claimant described symptoms related to uterine fibroids that are getting worse. Claimant also described her typical seizure pattern. Claimant's testimony regarding her limitations is not fully supported by the medical evidence and is found only partially credible. Specifically, her testimony regarding the frequency of ongoing seizures is not supported by the June 2014 and July 2014 treatment records from the neurologist and the primary doctor, both indicating a last seizure in May 2014. The July 3, 2014 DHS-49 Medical Examination Report only states Claimant continues to experience monthly seizures and would not have limitations with standing, walking, sitting, or using her extremities unless she is going through a seizure. After review of the entire record it is found, at this point, that Claimant maintains the residual functional capacity to perform limited light work as defined by 20 CFR 416.967(b). Limitations would include no driving, heights, ladders, or dangerous machinery.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age,

education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

Claimant has a work history of child care provider, toddler teacher, preschool teacher, and child care assistant. As described by Claimant, this involved standing, walking, reaching, and chasing after children with lifting up to 20-30 pounds. It is possible that this work may involve working with children around playground equipment that has some elevated areas, ladders, etc. In light of the entire record and Claimant's RFC (see above), it is found that Claimant is not able to perform her past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4; therefore, the Claimant's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Claimant'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, Claimant was 37 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant completed some college and has a work history of child care provider, toddler teacher, preschool teacher, and child care assistant. Any skills from this past work would not be transferable to other types of work. 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 evidence confirms recent diagnosis and treatment of seizure disorder and depression. As noted above, Claimant at this point maintains the residual functional capacity to perform limited light work as defined by 20 CFR 416.967(b). Limitations would include no driving, heights, ladders, or dangerous machinery. Even considering these limitations, significant jobs would still exist in the national economy.

After review of the entire record, and in consideration of the Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.21, Claimant is found not disabled at Step 5 for ongoing MA-P.

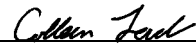
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA benefit program for a closed period through May 2014.

DECISION AND ORDER

Accordingly, the Department's determination is **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. Initiate a review of the application dated August 15, 2013, if not done previously, to determine Claimant's non-medical eligibility for a closed period through May 2014. The Department shall inform Claimant of the determination in writing.
2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **9/23/2014**

Date Mailed: **9/23/2014**

CL / hj

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

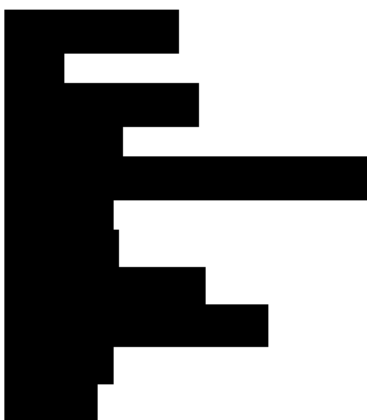
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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:

A large black rectangular redaction box covers the names and contact information of the recipients listed under the 'cc:' field.