

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003358
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: August 26, 2014
County: Genesee County DHS #6

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, a telephone hearing was held on **August 26, 2014**, from **Flint**, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED], Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], [REDACTED].

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 December 17, 2013, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On February 20, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On March 13, 2014, the Department notified Claimant of the MRT determination.
4. On May 30, 2014, the Department received Claimant's timely written request for hearing.
5. On July 28, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged disabling impairments including back injury, diabetes, neuropathy, diminished vision, heart disease, and depression.

7. At the time of hearing, Claimant was 36 years old with an [REDACTED], birth date; was 5'6" in height; and weighed 140 pounds.
8. Claimant completed the 10th grade and has a work history including fast food and cashier.
9. 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 disabling impairments including back injury, diabetes, neuropathy, diminished vision, heart disease, and depression. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

An April and September 2013, cardiology record listed impressions including: diabetes, hyperlipidemia, anxiety, benign hypertension, native coronary artery disease, dizziness, malaise/fatigue, shortness of breath, precordial pain, obesity, old myocardial infarct, COPD, status post PTCA, palpitations, chest pain, ischemic heart disease, and abnormal EKG.

A May 28, 2013, echocardiogram showed abnormal findings including: moderately decreased left ventricular function with an ejection fraction of 40%, mild mitral valve regurgitation, mild tricuspid valve regurgitation, and multiple segmental abnormalities.

An August 14, 2013, x-ray of the lumbar spine did not show any gross abnormality.

A September 13, 2013, DHS-49-I Eye Examination Report documents best corrected vision on 20/40 left eye and 20/200 right eye. Supporting treatment records were included. Diagnoses were diabetic retinopathy, diabetic macular edema, and cataract in both eyes.

Claimant was hospitalized September 13-18, 2013 for diabetic ketoacidosis and non-ST segment elevation myocardial infarction. Claimant continuing to smoke and use marijuana after a previous heart attack in March 2013 was noted. The diabetic ketoacidosis resolved. Claimant had acute myocardial infarction, coronary artery disease, ejection fraction of 35-40%, hypertension, hyperlipidemia, and insulin

dependent diabetes. Claimant underwent a cardiac catheterization and was told she must discontinue the smoking and marijuana. Claimant was to be discharged but left abruptly that morning without prescriptions.

A September 24, 2013, echocardiogram showed abnormal findings including: moderately decreased left ventricular function, ejection fraction of 40-45%, and multiple segmental abnormalities.

On November 13, 2013, Claimant attended a consultative mental status examination. Diagnoses were anxiety disorder and cannabis abuse. The examiner's impression was the Claimant's mental abilities to understand, attend to, remember, and carry out instructions was not impaired. Claimant's abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace was mildly impaired.

A November 13, 2013, cardiology record indicated Claimant had a prior heart attack in March 2013, and that a stent was placed during intervention on March 30, 2013. Claimant underwent cardiac catheterization in September 2013 and the stent was patent. Claimant currently had no cardiac symptomology.

On November 14, 2013, Claimant attended a consultative physical examination. Impressions included: uncontrolled diabetes mellitus; history of diabetic ketoacidosis and hospitalization; history of heart attack with angioplasty and stent placement; chronic back ache with possible sciatica; impaired vision; anxiety and panic attacks; pain in bilateral feet; hypercholesterolemia per medication; possible congestive heart failure per medications; anticoagulation; and hypertension. Visual acuity was 20/50 in the left eye and 20/200 in the right eye. Claimant was unable to do heel to shin test and rapid alternating hand movements. The Romberg sign was positive. Fine and gross dexterity as well as grip was normal in both upper extremities and hands. Claimant was able to squat but not able to walk on heels and toes. The examiner was not consistent regarding Claimant's use of a cane in the exam narrative and the supplemental report.

A December 3, 2013, transthoracic echo report showed moderately abnormal left ventricular ejection fraction estimated at 35-40% and anterior wall hypokinesis.

A March 26, 2014, ultrasound of the right hip noted a small right hip joint effusion of uncertain etiology and no evidence of bursitis.

Records from Valley Medical Center document diagnosis and treatment of multiple conditions including: hypokalemia, hyperlipidemia, diabetes type 1, hypertension, anxiety, coronary artery disease, tobacco abuse, congestive heart failure, hyperglycemia, GERD, COPD, diabetic peripheral neuropathy, noncompliant patient, chronic lower back pain, dysplasia of cervix, retinopathy, marijuana abuse, fatigue, urinary frequency, shortness of breath with exertion, and vision loss. The records repeatedly indicate that Claimant did not have a medical marijuana license. In part, the April 1, 2014, record indicates Claimant: denied angina; continued to smoke and use marijuana; had decreased lumbar range of motion with tenderness to motion, positive muscle spasms, and positive crepitus; and diabetic peripheral neuropathy.

A May 2, 2014, New York Heart Association Classification indicates Claimant is functional Class II and Therapeutic Class B.

An August 14, 2014, letter from the eye doctor documented proliferative diabetic retinopathy in both eyes with high risk characteristics left eye from preretinal hemorrhage; vitreomacular traction left eye; clinically significant diabetic macular edema both eyes, and center involved cystic macular edema both eyes. It was explained that cessation of smoking was critical to prevent advancement in her retinopathy. Needed treatments included anti-VEGF injections and the PRP laser.

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 multiple impairments including: diabetes with complications including peripheral neuropathy, diabetic retinopathy, diabetic macular edema and cataract in both eyes; myocardial infarction; coronary artery disease; hypertension; hyperlipidemia; anxiety disorder; tobacco and marijuana abuse; dysplasia of cervix; GERD; COPD; and chronic lower back pain.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System, 3.00 Respiratory System, 4.00 Cardiovascular System, 9.00 Endocrine Disorders; 11.00 Neurological, and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

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 multiple impairments including: diabetes with complications including peripheral neuropathy, diabetic retinopathy, diabetic macular edema and cataract in both eyes; myocardial infarction; coronary artery disease; hypertension; hyperlipidemia; anxiety disorder; tobacco and

marijuana abuse; dysplasia of cervix; GERD; COPD; and chronic lower back pain. Claimant's testimony indicated she can walk 30 minutes, stand 60 minutes at most, sit 5 minutes (noting a fall a few days prior to the hearing and her tailbone hurts), and lift two gallons of milk (about 16 pounds). Claimant testified she is down to 5 cigarettes per day and has a medical marijuana card. Claimant's testimony regarding her limitations is not fully supported by the medical evidence and found only partially credible. Claimant's documented non-compliance is also concerning. However, the medical records do document treatment for multiple severe impairments, which result in a combination of exertional and non-exertional limitations that would preclude employment at any level on a sustained basis. After review of the entire record it is found, at this point, that Claimant does not maintain the residual functional capacity to perform even sedentary work as defined by 20 CFR 416.967(a).

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 fast food and cashier. 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 36 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant completed the 10th grade and has a work history including fast food and cashier. 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 multiple impairments including: diabetes with complications including peripheral neuropathy, diabetic

retinopathy, diabetic macular edema, and cataract in both eyes; myocardial infarction; coronary artery disease; hypertension; hyperlipidemia; anxiety disorder; tobacco and marijuana abuse; dysplasia of cervix; GERD; COPD; and chronic lower back pain. As noted above, Claimant does not maintain the residual functional capacity to perform even sedentary work as defined by 20 CFR 416.967(a) on a sustained basis.

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, Claimant is found disabled at Step 5.

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.

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 December 17, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for October 2015.
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: **10/2/2014**

Date Mailed: **10/2/2014**

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:

