

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

IN THE MATTER OF:



Reg. No.: 201416665
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 28, 2014
County: Macomb

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 May 28, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and her authorized hearings representative [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED]. During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

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 December 4, 2013, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On July 15, 2013, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that her impairments do not meet the durational requirement.
3. On November 20, 2013, the Department sent the Claimant notice that it had denied the application for assistance.

4. On December 4, 2013, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
5. On January 30, 2014, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits.
6. On August 8, 2014, after reviewing the additional medical records, the State Hearing Review Team (SHRT) again upheld the determination of the Medical Review Team (MRT) that the Claimant does not meet the disability standard.
7. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
8. The Claimant is a 55-year-old woman whose birth date is [REDACTED]
9. Claimant is 5' 3½" tall and weighs 240 pounds.
10. The Claimant is a high school graduate.
11. The Claimant is able to read and write and does have basic math skills.
12. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
13. The Claimant has past relevant work experience as a teacher's assistance where she was required to lift objects weighing as much as 50 pounds.
14. The Claimant's disability claim is based on shortness of breath, obesity, and a heart condition.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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 the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant testified that she has not been employed since 2006 and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore this Administrative Law Judge finds that the Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 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 not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is

"severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 55-year-old woman that is 5' 3½" tall and weighs 240 pounds. The Claimant alleges disability due to shortness of breath, obesity, and a heart condition.

The objective medical evidence indicates the following:

The Claimant was admitted to a hospital for chest pain secondary to pulmonic valve mass obstruction. On [REDACTED], the Claimant underwent pulmonary valve excision for spindle cell lipoma of the pulmonary valve due to a tumor that was causing pulmonary stenosis and outflow obstruction. On [REDACTED], a treating physician determined that the Claimant was not capable of lifting 10 pounds, but was capable of standing for 6 hours in an 8-hour workday. The treating physician determined that the Claimant was capable of grasping and manipulating objects as well as operating foot controls, but was not capable of reaching, pushing, or pulling.

The Claimant testified during the hearing that she does not smoke cigarettes, but reported to her treating physician on [REDACTED], that she is an active smoker of a pack of cigarettes each week. On [REDACTED], [REDACTED], the Claimant's treating physician found the Claimant to be doing well from a cardiac standpoint and that her left ventricular systolic functioning was normal.

The Claimant lives by herself and is capable of caring for her personal needs such as showering and dressing herself without assistance.

The evidence on the record indicates that the Claimant's was been diagnosed with a tumor on her heart valve requiring surgery by her treating physician. The Claimant was hospitalized for chest pain and it was necessary for her to undergo heart surgery. On [REDACTED], the Claimant's treating physician found her to be not capable of lifting 10 pounds. Since recovering from her surgery, the Claimant's treating physician found her to be doing well from a cardiac standpoint and that her left ventricular systolic functioning was normal. The Claimant is capable of living by herself and caring for her

personal needs without assistance. The evidence on the record supports a finding that the Claimant's condition is improving and will continue to improve.

The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, Claimant is found not to be disabled at this step.

Furthermore, while the Claimant testified during the hearing on May 28, 2014, that she does not smoke cigarettes, she reported to her physician on [REDACTED], that she smokes a pack of cigarettes each week. The evidence supports a finding that the Claimant continues to smoke despite the fact that her doctor has told her to quit. The Claimant testified that she is impaired due to shortness of breath, obesity, a heart condition. The Claimant testified that her condition has not improved in part because of her inability to exercise. Since the Claimant continued to smoke, she is not in compliance with her treatment program and her continuing smoking exacerbates her physical impairments. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 not disabled for purposes of the Medical Assistance (M.A.) benefits.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 09/02/2014

Date Mailed: 09/02/2014

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

KS/sw

cc:

