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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014 29489
Issue No.: 2009
Case No.: [redacted]
Hearing Date: July 2, 2014
County: Wayne County DHS (19)

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, a three way telephone hearing was held on July 2, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. A witness, [redacted], also appeared for the Claimant. [redacted], [redacted], the Claimant's Authorized Hearing Representative, also appeared. Participants on behalf of the Department of Human Services (Department) included [redacted] Eligibility Specialist.

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 August 27, 2012, Claimant applied for MA-P and retro MA-P (May 2012).

2. On January 25, 2013, the Medical Review Team denied Claimant's request.

3. The Department sent the Claimant a notice of case action on January 29, 2013 denying the Claimant MA-P application, but did not send the Claimant's AHR a notice of the Notice of Case Action until December 30, 2013 and thus the hearing request filed on February 11, 2014 is timely.

4. On February 11, 2014, Claimant's AHR submitted to the Department a timely hearing request.

5. May 6, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.

6. An Interim Order was issued on July 2, 2014 extending the record so that new medical evidence provided at the hearing by the AHR could be reviewed by the SHRT.

7. On August 7, 2014, the SHRT found the Claimant not disabled and denied Claimant's request.

8. Claimant at the time of the hearing was 59 years old with a birth date of [redacted] Claimant was 5' 7" and weighed 250 pounds. The Claimant was in a wheel chair at the hearing.

9. Claimant completed the 10th grade and has a GED and some college.

10. Claimant has no employment history for the last 15 years.

11. Claimant alleges physical disabling impairments due to cirrhosis of the liver without mention of alcohol, TIPS procedure with shunting due to liver disease and banding, Hepatitis C, edema in lower extremeties, myalgias and myositis, osteoporosis, narcolepsy and diabetes mellitus and obesity BMI 47. The Claimant also alleges fibromyalgia and lupus but is not being treated for same.

12. The Claimant has not alleged mental disabling impairments due to depression.

13. The Claimant's impairments have lasted or are expected to last for 12 months duration or more.

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).

The Claimant alleges physical disabling impairments due to cirrhosis of the liver without mention of alcohol, TIPS procedure with shunting due to liver disease and banding, Hepatitis C, edema in lower extremeties, myalgias and myositis, osteoporosis, narcolepsy and diabetes mellitus and obesity BMI 47.

The Claimant has alleged mental disabling impairments due to depression.

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

The Claimant was seen by a gastroenterologist for decompensated cirrhosis. The Claimant was first seen in July 2013 by this doctor. Based upon an EGD and placement of 8 bands, the Claimant underwent a TIPS procedure on August 12, 2013. After the procedure, the Claimant was having lower extremity edema. The impression was Hepatitis C cirrhosis with anasarca status post TIPS procedure and significant edema post procedure with coaguloapathy secondary to cirrhosis, and anemia with history of GI bleeding.

An x-ray of abdomen was performed in April 2013, and suggestion of small intestinal ileus with recommended repositioning required.

On September 17, 2013, the Claimant was admitted for a several day stay with pneumonia, shortness of breath and fever, and was discharged after a short stay. The Claimant had been previously hospitalized two weeks prior for fever, edema and abdominal pain. Imaging showed mild pleural effusion. The Hepatitis C viral load was undetectable. The Claimant was diuresed at time of hospitalization. A 2-D echocardiogram was performed, ejection fraction was 60-65%. The chest CT showed patchy infiltrative changes within both lungs and bilateral pleural effusions bilateral edema was slightly improved.

The Claimant had a cholecystectomy in July 2013, and an Exophagogastroduodeno-scopy with banding in April 2013.

The Claimant was seen by her doctor for hospital follow up on January 30, 2014. Chronic conditions noted were, carrier or suspected carrier of hepatitis C, myalgia and myositis, osteoporosis, lupus erythematosus, rheumatoid arthritis, depressive disorder, narcolepsy and diabetes mellitus. .At the time of the follow-up, the Claimant's BMI was 47 and she weighed 291 pounds. The diagnosis was cirrhosis, with discussion of liver transplant.

The Claimant was seen on November 25, 2013 for an office visit, who presented with rash, breathless and nausea. The distress was mild, coarse breath sounds with cough noted. The diagnosis was myalgia and myositis unspecified.

The Claimant was also seen on October 24, 2013, and noted moderate distress, with abdominal pain and given pain medication.

The Claimant was seen on September 11, 2013 after an 8-day stay in ICU and an 8-day hospitalization, and diaurized with 50-pound weight loss. Due to lack of insurance, Claimant was not able to take all her prescribed medications. Claimant was advised that she would not be able to stay out of hospital unless she obtained medications.

The Claimant was seen for surgical follow up on August 10, 2013. During her hospitalization she was in ICU for 8 days and had a TIP procedure with shunt placement in her liver and banding. The assessment noted cirrhosis of liver without mention of alcohol and myalgia and myositis.

The Claimant was seen for an office visit on May 30, 2013 for hospital follow up. The Claimant was hospitalized in early April 2013 for bleeding varices. Bands were placed on the varices.

A CT of abdomen and pelvis was performed on January 22, 2014, and compared to prior exam dated August 18, 2013. Degenerative changes were noted throughout the spine. Cirrhotic shrunken appearance of liver noted. A TIPS catheter was in place. Enlarged spleen with enlargement of the portal vein and splenic vein consistent with portal hypertension. Diffuse body wall edema noted. No bowel obstruction. Impression was cirrhotic liver with sequelae.

On September 17, 2013, a CT of the Thorax was performed and compared with August 2013 CT. The impression was interval development of extensive infiltrative changes throughout both lungs likely on an inflammatory basis. They were not present on prior study. Moderate bilateral pleural effusions increased from prior exam. No CT evidence to suggest pulmonary embolism. Post surgical changes in upper abdomen.

The Claimant was seen for a Consultative Examination on January 8, 2013. At the time of the examination, the Claimant had lost 35 pounds while in the hospital in July 2012. With regard to the cardiovascular system, the evaluation notes that Claimant is short of breath and has swelling of her hands and feet. The examiner noted complaints of pain in all of her body joints, muscle cramps and swelling of joints. A physical examination of the abdomen noted that the liver was not palpable. There was no evidence of jaundice. There was tenderness in the right upper quadrant. The Claimant had positive straight leg raising on the left, and a negative straight leg raising on the right. The Claimant had a positive Tinel's and Phalen's sign on the right and negative one on the left. "She should be able to open jars, button clothing right legibly, pick up coins and tie shoelaces." She is right-hand dominant. Claimant was unable to walk on her heels or toes, or heel to toe due to pain in her heels. The examiner noted that the Claimant used a cane in order to ambulate and she needed a cane to keep her balance. The assessment was that Claimant may have carpal tunnel syndrome on the right. History of hepatitis C which is partially treated. She has been diagnosed with diabetes and lupus in the past; she is being treated for diabetes but not lupus. She has a history of irritable bowel syndrome and fibromyalgia; she has a history of narcolepsy, which I believe is being treated with Adderall. No limitations were noted or imposed, nor was obesity

noted with regard to her ambulation, even though the examiner opined that use of a cane was medically necessary, and noted that Claimant would fall without the aid; thus, it was clinically required. The Claimant had reduced range of motion in her lumbar spine, hips and knees. The exam is limited in its usefulness due to the fact that the examiner notwithstanding requiring the use of the cane, did not reference the Claimant's obesity or her abilities to do various activities such as squat, stand, stoop and carry, particularly in light of the fact that a cane was necessary as a walking aid and that the notes indicate that Claimant would fall without use of a cane.

A Consultative Exam Mental Status Evaluation was performed on February 15, 2013. The Diagnosis was Major Depressive Disorder, recurrent, mild with a GAF score of 65-70. The examiner also provided a discussion of four work-related mental activities. The Claimant's ability to relate to others, including fellow workers and supervisors was rated as mildly impaired. In interacting with the examiner today, the client was able to form a rapport. The Claimant's mental ability to understand, remember and carry out tasks appears to be mildly impaired. The Claimant was able to perform simple repetitive tasks during the examination. It is likely the Claimant could handle more complex tasks. Difficulty in performing multiple step tasks is likely to be minimal. The Claimant's mental ability to maintain attention, concentration persistence, pace and effort is mildly impaired. The Claimant's mental ability to withstand stress and pressure associated with day-to-day work activities is mild to moderately impaired. The Claimant was admitted to the hospital on June 25, 2012, after being seen by her primary doctor for shortness of breath. The Claimant had awakened that morning choking and had difficulty breathing. At the time she was seen by her primary care doctor, her pulse oximetry was 90% room air. Even after breathing treatments, her symptoms did not improve. The Claimant was also examined due to edema and swelling in her lower arms which extend to her abdomen. At the time of her admission, the Claimant had decreased appetite for 4 to 5 months, but had gained 25 pounds. The examination noted bilateral lower leg swelling; +2 pitting edema +2 pulse ox bilateral upper and lower extremities were also noted. Her INR was 1.5. At the time of her admission, the Claimant was given to the limits of a blood transfusion. At the time of her admission, the Claimant was admitted to the ICU unit. The Claimant's blood transfusion was to assist in maintaining adequate oxygen-carrying capacity. A large amount of ascetic fluid was found. The impression was anemia due to chronic disease.

At the hearing the Claimant also credibly testified that she could not stand, and could sit but was in pain with soreness. The Claimant was in a wheelchair at the hearing and uses the wheelchair to get around her house. The Claimant uses a shower chair in the shower and gives herself a sponge bath and requires assistance toileting. Her feet and legs continue to swell. Her hands are weak and she did not believe she could lift or carry any significant weight. The Claimant indicated that she sleeps much of her day. The Claimant could not squat or tie her shoes.

Here, Claimant has satisfied requirements as set forth in steps one, 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.

1. A review of the SSA listings was made in this case, specifically Listing 5.05 Chronic Liver Disease. The listing provides :

F. Hepatic encephalopathy as described in 5.00D10, with 1 and either 2 or 3:

2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt; or

Based upon these functional limitations, and the Claimant's having undergone the TIPS procedure with ongoing edema, and the medical evidence presented, it is determined that the Claimant has demonstrated that Listing 13.13 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 ☒ 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 August 27, 2012 application for Medical Assistance and retroactive application for Medical Assistance (May 2012) 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 September 2015.

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

Date Signed: September 5, 2014

Date Mailed: September 5, 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]