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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-002849
Issue No.: 2009
Case No.: [redacted]
Hearing Date: September 11,2014
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on September 11, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [redacted] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [redacted], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

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 [redacted], Claimant applied for MA benefits, including retroactive MA benefits from 8/2013.

2. Claimant's only basis for MA benefits was as a disabled individual.

3. On [redacted], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).

4. On an unspecified date, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [redacted], Claimant's AHR requested a hearing disputing the denial of MA benefits.

6. On [redacted], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past relevant employment.

7. On [redacted], an administrative hearing was held.

8. During the hearing, both parties waived the right to receive a timely hearing decision.

9. During the hearing, the record was extended 24 days- 21 days for Claimant to submit medical records since 5/2014 and 3 additional days for DHS to present any written objections; an Interim Order Extending the Record was subsequently mailed to both parties.

10. On [redacted], Claimant's AHR submitted additional documents (Exhibits B1-B53).

11. On [redacted], Claimant's AHR submitted additional documents (Exhibits C1-C10).

12. As of the date of the administrative hearing, Claimant was a 56 year old female with a height of 5'9'' and weight of 204 pounds.

13. Claimant has no known relevant history of alcohol or illegal substance abuse.

14. Claimant's highest education year completed was the 12th grade.

15. As of the date of the administrative hearing, Claimant was a Healthy Michigan Plan recipient since 4/2014.

16. Claimant alleged disability based on impairments and issues including congestive heart failure (CHF), dyspnea, low energy, diabetes mellitus (DM), hypertension, and asthma.

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

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, a 3-way telephone hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id*. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id*. AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).
  BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id*., p. 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id*., p. 9.

Significant duties are duties used to do a job or run a business. *Id*. They must also have a degree of economic value. *Id*. The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id*.

The person claiming a physical or mental disability has the burden to establish a disability 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 CRF 413.913. 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2013 monthly income limit considered SGA for non-blind individuals is $1,040. The 2014 monthly income limit considered SGA for non-blind individuals is $1,070.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id*.

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions

- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 7-31; 56-120) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of chest pain and mild dyspnea. Mild bilateral pitting edema was noted. An assessment of severely elevated left ventricle diastolic pressure was noted. It was noted that on [redacted], Claimant underwent two balloon angioplasties and two stent insertions. A right heart catheterization was performed and mild pulmonary HTN was noted. A discharge date of [redacted] was noted.

Cardiologist clinic notes (Exhibits 32-37) dated [redacted] were presented. It was noted that Claimant's heart was classified as NYHA Class III. Claimant's blood pressure was noted as controlled. Thirty minutes of walking every other day was recommended.

Cardiovascular institute discharge documents (Exhibits 4-6) dated [redacted] were presented. Diagnoses of coronary artery disease (CAD) and HTN were noted. Discharge instructions noted improved condition with home self-care.

Hospital documents (Exhibits A122-A124) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of leg swelling, ongoing for "quite some time". It was noted that Claimant ran out of blood pressure medication. Claimant was given Lasix which reduced blood pressure from 223/122 to

120/78. Noted discharge diagnoses included chronic HTN, diabetes, and out of medication.

Hospital documents (Exhibits A3-A9; A16-A29; A40-A52; A73-A78; A83-A102) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of chest pain, ongoing for 1 day. An impression of goiter with right thyroid lobe nodule was noted. A recommendation of outpatient evaluation was noted. It was noted that Claimant required ambulation supervision. A discharge date of [redacted] was noted.

Hospital documents (Exhibits A181-A184) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of chest pain and leg swelling. A "nutrition related knowledge deficit" was noted. It was noted that Claimant received diabetic diet information.

Hospital documents (Exhibits A10-A15; A30-A39; A103-A115; A125-A127) from an admission dated [redacted] were presented. Claimant reported that heart failure was under control. It was noted that Claimant presented with complaints of left flank pain radiating to the back. A 9 mm non-obstructive calculus was noted. It was also noted that there was no evidence of acute coronary syndrome. A plan noted continuing Plavix, aspirin, and beta-blocker for cardiac treatment. A follow-up CT in 3 months was recommended. Noted discharge diagnoses included duplicated renal cyst and pulmonary nodule requiring follow-up in 3-6 months. A discharge date of [redacted] was noted.

Hospital documents (Exhibits A128-A130) from an encounter dated [redacted] were presented. It was noted that Claimant reported complaints of a runny nose, congestion, and sore throat. Claimant also reported extensive bruising following a fall. Leg and wrist x-rays were negative. A recommendation of staying mobile to avoid stiffness was noted. Claimant was given Claritin to treat her cold.

Hospital documents (Exhibits A131-A133) from an encounter dated [redacted] were presented. It was noted that Claimant reported ongoing viral symptoms. An EKG noted normal sinus rhythms. Lower extremity swelling was noted as caused by medication noncompliance.

Hospital documents (Exhibits A56-A72; A79-A82; A185-A187) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of bilateral leg swelling, body aches, and nasal congestion. It was noted that Claimant reported not taking insulin due to a lack of insurance. An assessment of diastolic heart failure was noted.

Hospital documents (Exhibits B2-B16; B43-B53) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of leg pain, hoarseness, and cramping, ongoing for 1 week. Claimant's blood sugar was noted as 453. Right leg cellulitis was noted. Diabetic recommendations included insulin before

each meal, continuation of Lantus, weight reduction, and increase physical activity. An assessment of asthma was also noted. Claimant's blood sugar improved and Claimant was discharged on [redacted].

Hospital documents (Exhibits B1; B20-B42) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of high blood pressure and high blood sugar. It was noted that Claimant was noncompliant with insulin despite recently refilling a prescription.

Cardiologist physician office visit documents (Exhibits C1-C5) dated [redacted] were presented. It was noted that Claimant complained of swollen feet and leg pain. It was noted that Claimant was scheduled for a peripheral angioplasty. It was noted that Claimant's legs displayed discoloration and swelling. Claimant's ejection fraction was noted as stable. Claimant's blood pressure was noted to be 182/93; it was also noted that Claimant did not take her medication that day. Various abnormalities supporting a diagnosis of peripheral artery disease (PAD) were noted.

A Medical Examination Report (Exhibits C6-C7) dated [redacted] was presented. The form was completed by a cardiologist with an unspecified history of treating Claimant. Claimant's physician listed diagnoses of PAD, CAD, DM, HTN, and CHF. An impression was given that Claimant's condition was stable. It was noted that Claimant was unable to perform shopping.

Claimant had numerous hospital encounters. The amount of hospital intervention was indicative of severe impairments. As it happened, many encounters were for acute problems (e.g. a cold) or for problems caused by medical noncompliance.

Claimant alleged disability, in part, based on CHF. On [redacted], a chest x-ray noted bibasilar atelectasis but no evidence of CHF. When Claimant was examined by a cardiologist a week later, a diagnosis of CHF was not provided. In 9/2014, CHF was noted as a diagnosis. Other cardiac problems such as PAD, CAD, HTN, including pulmonary HTN, were verified. Claimant's extensive cardiac treatment was sufficient to establish some degree of lifting/carrying and ambulation restrictions.

Claimant seeks a disability finding from 8/2013. Medical records before 10/2013 were not presented. Based on Claimant's extensive cardiac treatment in 10/2013, it can be found that Claimant likely had cardiac restrictions in 8/2013. It is found that Claimant had severe impairments since 8/2013 and the analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

A listing for chronic pulmonary insufficiency (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

A listing for chronic heart failure (Listing 4.02) was considered based on cardiac treatment history. The listing was rejected because of the absence of evidence of the following: inability to perform an exercise test, three or more episodes of acute congestive heart failure or a conclusion that an exercise test poses a significant risk to Claimant's health.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

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 it is determined that a claimant can perform past relevant work. *Id*.

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). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant testified that her past jobs involved the following: store clerk, quality compliance, prepping surgery rooms, and dental office manager. The least physically taxing former job mentioned by Claimant was as a receptionist.

Claimant testified that her receptionist employment was mostly sitting but also required her to distribute mail. When asked if she could perform her past employment, Claimant testified that her past job required stair climbing than Claimant could perform. Claimant's testimony was credible and consistent with presented evidence. It is found that Claimant could not perform past employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. 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).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

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 are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning 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.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform medium employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Medium employment requires comparable standing and walking standards, but with a heavier lifting requirement than light employment.

Claimant's NYHA Class III functional capacity is representative of a patient with cardiac disease resulting in marked limitations of physical activity. It is also consistent with someone comfortable at rest while less than ordinary physical activity causes fatigue, palpitation, dyspnea or anginal pain. The classification, along with Claimant's extensive cardiac history sufficiently verified that Claimant is unable to perform medium exertional employment.

On [redacted], Claimant's cardiologist opined that Claimant was restricted as follows over an eight-hour workday, less than 2 hours of standing and/or walking, and less than 6 hours of sitting (see Exhibits C6-C8). Claimant's physician opined that Claimant was restricted to occasional lifting/carrying of less than 10 pounds, never 10 pounds or more. The stated basis for restrictions was severe life-limiting leg pain.

The cardiologist stated restrictions were consistent with finding that Claimant is not capable of performing the standing or lifting required of medium employment. The restrictions were also consistent with someone with Claimant's medical history. It is found that Claimant is not capable of medium-exertional employment. For purposes of this decision, it will be found that Claimant can perform light employment which does not involve stair climbing.

Based on Claimant's exertional work level (light), age (advanced age), education (high school with no direct entry into skilled employment), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 202.06 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

(1) reinstate Claimant's MA benefit application dated [redacted], including retroactive MA benefits from 8/2013;
(2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
(4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

The actions taken by DHS are **REVERSED**.

Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/28/2014**

Date Mailed: **10/28/2014**

CG / hw

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: [redacted]