

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-005614
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 08, 2014
County: Wayne (49-Gr River/Warren)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 October 8, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

After the hearing, a review of Claimant's SOLQ report, which allows the Department to access a client's benefit status with the Social Security Administration (SSA), showed that Claimant was approved for disability benefits with an October 7, 2009, disability onset date. An Interim Order was issued after the hearing to allow the AHR to provide documentation to establish whether SSA had made a final decision, or one that was not timely appealed by Claimant, that no disability existed prior to the October 7, 2009, disability onset date on the SOLQ presented. Under Department policy, the SSA's decision that a disability does not exist is final for MA-P if no further appeals may be made at the SSA, or the client failed to file a timely appeal. Program Eligibility Manual (PEM) 260 (January 2007), pp. 2-3. The response received was inconclusive. Accordingly, the record was closed and the medical record presented was reviewed to assess Claimant's disability. It is noted, however, that Claimant's eligibility for MA-P remains subject to any SSA final decision (or an SSA decision that was not timely appealed) that found Claimant not disabled prior to October 7, 2009.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) 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 February 27, 2007, Claimant submitted an application for public assistance seeking MA-P benefits with retroactive coverage to November 2006.
2. On September 24, 2012, the Medical Review Team (MRT) found Claimant not disabled.
3. Following the AHR's September 21, 2011, request for hearing concerning the Department's denial of Claimant's MA-P application, a Settlement Order was issued by Administrative Law Judge Jan Leventer on January 11, 2013, in connection with Registration No. 2013-3383, in which the Department agreed to reinstate and reprocess Claimant's application.
4. Following another request for hearing, in a March 19, 2014, Hearing Decision in connection with Registration No. 2014-1361, Administrative Law Judge Lynn Ferris found that the Department had failed to comply with the terms of the Settlement Order and ordered the Department to process Claimant's February 27, 2007, application for MA-P and retro-MA-P and send a Notice of Case Action with its decision to Claimant and the AHR.
5. On March 27, 2014, the Department sent Claimant and the AHR a Benefit Notice denying the application based on MRT's finding of no disability.
6. On June 23, 2014, the Department received the AHR's timely written request for hearing.
7. Claimant alleged disabling impairments due to chronic heart failure, coronary artery disease, stroke, hypertension, and memory loss.
8. On the date of the hearing, Claimant was 66 years old with [REDACTED] birth date; she is 5'5" in height and weighs 146 pounds.
9. Claimant has a 10th grade education; she can read and write.
10. Claimant has an employment history of work as an assembly line worker

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.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2013); BEM 261 (July 2013), p. 1. In order to receive MA-P benefits based upon disability, Claimant must be disabled as defined in Title XVI of the Social Security Act (SSA). 20 CFR 416.901. Under the SSA, disability for MA-P purposes is 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).

To determine whether an individual is disabled for SSI purposes, federal regulations require application of a five-step sequential evaluation process that requires the trier of fact to consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (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 to 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).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first Step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may 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). However, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). The medical evidence presented at the hearing was reviewed and is summarized below.

██████████ Claimant was hospitalized following complaints of chest pain. She was examined and found to be suffering from fatigue, chest pain, shortness of breath, muscle aches and headaches. During the hospitalization, she also complained of right facial numbness. A CT of the head showed chronic white matter changes and small lacunes such that an early infarct could not be excluded; a follow-up MRI was recommended. An MRI/MRA of Claimant's brain was negative for acute stroke; it was noted that there was probable atherosclerotic change within the cavernous segment of the right internal carotid artery but no obvious stenosis, occlusion, persistent narrowing or arteriovenous malformation. Chronic ischemic changes and old lacunar infarcts were noted. A CT of Claimant's chest and abdomen showed (i) no evidence of dissection although there was a small abdominal aortic aneurysm; (ii) cardiomegaly; (iii) and two moderately high density lesions in the left kidney, largely unchanged from a ██████████ CT but a follow-up MRI was recommended. A chest x-ray was compared to a ██████████ x-ray and showed no acute changes, with stable cardiomedial silhouette and hilar vessels, no pneumothorax, no consolidation, aortic uncoiling, and stable osseous structures. Claimant was diagnosed with coronary artery disease, hypertension and renal insufficiency. She was prescribed atorvastatin, isosorbide mononitrate, Lisinopril, and metoprolol and was discharged ██████████ in good condition.

██████████ Claimant was treated for pneumonia and released from the emergency department.

In her application, Claimant alleges disability due to chronic heart failure, coronary artery disease, hypertension, and memory loss. Although Claimant testified at the hearing that since her ██████████ hospitalization she had suffered from a stroke and had a kidney removed, there was no medical evidence presented supporting these impairments or to establish that these conditions had resulted from the conditions identified in the medical documents presented. In fact, as the AHR acknowledged at the hearing, the objective medical evidence presented at the hearing, which is limited almost exclusively to Claimant's ██████████ hospitalization, shows that Claimant was tested for and determined to have **not** suffered a stroke.

While there is limited medical evidence concerning her impairments, because the *de minimus* standard is applied in assessing the severity of an impairment, the medical

evidence concerning Claimant's chronic heart failure, coronary artery disease, and hypertension is sufficient to establish that, under Step 2, Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual'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 an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next Step.

The evidence shows diagnosis of, and treatment for, chronic heart failure, coronary artery disease, hypertension, and memory loss. With respect to Claimant's diagnosis, and treatment for, chronic heart failure, coronary artery disease and hypertension, listing 4.00, particularly 4.02 (chronic heart failure) and, in consideration of her allegations of memory loss, listing 11.00 (neurological), were considered. The evidence presented does not support a finding that Claimant's impairments meet, or equal, the required level of severity of any of the listing considered. Therefore, the disability analysis proceeds to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions 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).

In this case, Claimant alleges exertional limitations due to chronic heart failure, coronary artery disease and hypertension. Claimant also alleges nonexertional limitations due to memory loss. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work, and consideration of whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. Listing 12.00A. While the MRI/MRA of Claimant's brain showed probable atherosclerotic change within the cavernous segment of the right internal carotid artery, it showed no obvious stenosis, occlusion, persistent narrowing or arteriovenous malformation. Further, although the medical file references lightheadedness and headaches, there is no objective medical evidence supporting Claimant's alleged memory loss. To the contrary, [REDACTED] cardiology consultation failed to note any abnormality in Claimant's recent and remote memory or her attention span and concentration. Therefore, only the exertional limitations presented by Claimant's impairments are considered.

To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

Sedentary work.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 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. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

In this case, Claimant alleged numerous physical limitations: she testified that she cannot walk more than 20 steps without getting tired; that she uses a doctor-prescribed cane when walking; that she cannot stand too long because of left-leg pain; that she avoids stairs; that she can carry a gallon of milk but not too long, that she gets cramps when she uses her hands in a repetitive manner; that she needs assistance in dressing herself; and that she lives alone but her sisters help her cook and clean.

Two things are noted with respect to the assessment of Claimant's RFC. First, because nearly eight years have lapsed since Claimant's February 27, 2007, MA-P application, it

is difficult to ascertain Claimant's physical limitations at the time of application without reference to her current situation. Furthermore, and more detrimental to Claimant's case, Claimant's medical records support only minimal exertional limitations due to her impairments. The medical records presented are limited almost entirely to Claimant's [REDACTED] hospitalization. There were no additional medical records, consultations, or exam reports provided to support Claimant's allegations concerning her alleged physical limitations. It is noted that at the hearing the AHR provided additional documentation; however, a review of those documents after the hearing shows that these documents were duplicative of the medical packet previously submitted and reviewed by the Medical Review Team. The AHR did not present any new medical evidence to support its disability claim or request to extend the record to obtain new medical evidence.

Based on the medical presented, and in the absence of any medical evidence to support her testimony concerning her exertional limitations, Claimant maintains the physical capacity to perform, at a minimum, medium work as defined by 20 CFR 416.967(c). Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to at least medium work activities. Claimant's testimony regarding her work history in the 15 years prior to the application was limited to parts assembly work. Claimant was unable to clearly describe the work activities involved in her prior employment. Consequently, it is unclear whether Claimant was able to perform past relevant work, particularly at the time of her application. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In step 5, an assessment of Claimant's RFC 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 this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain SGA. 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). If the individual can adjust to other work, then there is no disability. 20 CFR 416.963(c). Disability is found if an individual is unable to adjust to other work. *Id.*

In this case, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical and mental demands required to perform medium work as defined in 20 CFR 416.967(c). Her limited education and her unskilled work experience render her skills *not* transferable. At the time of application, Claimant was 58 years old and, thus, considered to be an advanced-age individual for MA-P purposes. After review of the entire record and in consideration of Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines (20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 203.11, Claimant is found **not** 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 not disabled for purposes of the MA-P benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/31/2014**

Date Mailed: **11/3/2014**

ACE / pf

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]