

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011289
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 30, 2014
County: Ingham

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 3-way telephone hearing was held on October 30, 2014, from Lansing, Michigan. Claimant, represented by [REDACTED], of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Hearing Facilitator [REDACTED].

During the hearing, Claimant submitted additional medical evidence for consideration. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

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 March 10, 2014, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On June 19, 2014, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA.
3. On June 20, 2014, the Department sent Claimant notice that her application for MA/Retro-MA had been denied.
4. On September 9, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
5. Claimant had applied for Social Security disability benefits at the time of the hearing.

6. Claimant is a 49 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 312 lbs.
7. Claimant does not have an alcohol, nicotine or drug problem.
8. Claimant has a driver's license and is able to drive.
9. Claimant has a high school education through special education.
10. Claimant is currently working part-time, 12-15 hours a week, 3-4 hours a day.
11. Claimant alleges disability on the basis of morbid obesity, diabetes, obstructive sleep apnea, chronic obstructive pulmonary disease, asthma, hypertension, osteoarthritis, hypothyroidism, chronic cellulitis, and a learning disability.
12. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
13. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

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.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

. . . 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.

The federal regulations require that several considerations be analyzed in sequential order:

. . . We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do

other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

. . . You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as ultrasounds, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

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).

Applying the sequential analysis herein, the first step looks at the individual's current work activity. In the record presented, Claimant is not ineligible at the first step as Claimant is only working 12-15 hours a week at \$11.52 an hour, which does not meet the threshold of

substantial gainful activity, currently measured by income of \$,1070.00 per month. 20 CFR 416.920(b). Therefore, she is not disqualified from receiving disability benefits under Step 1.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to morbid obesity, diabetes, obstructive sleep apnea, chronic obstructive pulmonary disease, asthma, hypertension, osteoarthritis, hypothyroidism, chronic cellulitis, and a learning disability. As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the medical evidence, Claimant has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2. The analysis continues.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical disabling impairments due to morbid obesity, diabetes, obstructive sleep apnea, chronic obstructive pulmonary disease, asthma, hypertension, osteoarthritis, hypothyroidism, chronic cellulitis, and a learning disability.

Claimant has been medically described as morbidly obese which condition likely exacerbates her impairments.

Obesity is a medically determinable impairment that is often associated with disturbance of the respiratory system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity. Listing 3.00(I).

In December, 2013, Claimant was hospitalized for right elbow pain, diabetes mellitus, hypertension and hypothyroidism. Claimant was discharged two days later with a diagnosis of: cellulitis of the right upper extremity, diabetes mellitus type 2, asthma, osteoarthritis, hypothyroidism, hypertension and morbid obesity.

Claimant was hospitalized in January, 2014, with dyspnea, acute bronchitis and bronchospasm. She was observed for a COPD exacerbation. During the course of observation, Claimant had breathing treatments, steroids, antibiotics and serial cardiac enzymes. She was diagnosed the following day with improved breathing and negative cardiac markers.

On [REDACTED], Claimant's chest CT without contrast revealed stable bilateral pulmonary nodules, stable appearance to the enlarged right lobe of the thyroid and a stable left adrenal lesion. The physician opined that the asymmetric enlargement of the right lobe of the thyroid causes some mild narrowing of the tracheal airway.

A pulmonary function report dated [REDACTED], indicates Claimant has moderate restriction and mild obstruction, and no marked improvement in FEV1 after using the bronchodilator.

Claimant underwent a medical evaluation by the Department on [REDACTED]. Claimant's chief complaints were asthma, hip, back, knee and shoulder pain, sleep apnea, and recurrent cellulitis in her arms and legs. She stated that the heat and cold make her breathing worse. She sleeps on three pillows and has paroxysmal nocturnal dyspnea. She does use CPAP for sleep apnea. She uses a cane for occasional pain. The physician indicated she appeared mildly dyspneic and older than stated age. She had findings of restrictive lung disease which appeared related to her body habitus but also possibly to chronic bronchitis. She did have some lower extremity edema. Regarding her arthropathy, much of it appeared to be related to her body habitus. She did have diminished range of motion in multiple joints. She had mild difficulty doing orthopedic maneuvers. She compensated with a guarded wide based gait but remained stable enough not to require an assistive device. The examining physician opined that she did not appear to be actively declining but was at risk for further deterioration without weight reduction.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), and Listing 9.00 (endocrine disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are 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's work history is that of a parking booth attendant for the past 14 years. This does not meet the definition of substantial gainful activity. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 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). At this point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

The medical information indicates that Claimant suffers from morbid obesity, diabetes, obstructive sleep apnea, chronic obstructive pulmonary disease, asthma, hypertension, osteoarthritis, hypothyroidism, chronic cellulitis, and a learning disability.

Claimant credibly testified that she has a very limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. Claimant is able to walk half a block and can stand for 5 minutes with the help of a walker. Her hips and knees are very painful and she suffers from shortness of breath on a daily basis. She uses a rescue inhaler daily, in addition to her breathing treatments. When grocery shopping she must use a motorized cart.

Claimant is 49 years old, with a high school education through special education. Claimant's medical records are consistent with her testimony that she is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

DECISION AND ORDER

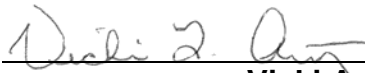
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Claimant's March 10, 2014, MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The Department shall review Claimant's medical condition for improvement in November, 2015, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.



Vicki Armstrong
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/12/2014**

Date Mailed: **11/12/2014**

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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 48909-8139

cc:

