

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-006734  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: October 13, 2014  
County: Wayne (35)

**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 October 13, 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] Hearings Facilitator.

**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 5/2013.
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 8-9).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant's AHR of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], an administrative hearing was held.
7. During the hearing, both parties waived the right to receive a timely hearing decision.
8. During the hearing, the record was extended 45 days for Claimant to submit Medical Examination Reports and/or treating physician documents to support any restrictions; an Interim Order Extending the Record was subsequently mailed to both parties.
9. On [REDACTED], Claimant submitted additional documents (Exhibits D1-D3; E1-E11).
10. As of the date of the administrative hearing, Claimant was a 60 year old female with a height of 5'5" and weight of 231 pounds.
11. Claimant has no known relevant history of alcohol or illegal substance abuse.
12. Claimant's highest education year completed was a Bachelor of Arts (in accounting).
13. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 5/2014.
14. Claimant alleged disability based on impairments and issues including congestive heart failure (CHF), diabetes mellitus (DM), hypertension (HTN), kidney disease, neuropathy, and vision loss.

### **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 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 CFR 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.

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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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 10-31; 44-49) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dyspnea, ongoing for "few days". Left leg swelling and pitting edema were noted. A medical history of DM (type II), asthma, deep vein thrombosis, and pulmonary HTN were noted. Cardiac testing demonstrated hypertensive cardiomyopathy with mild concentric left ventricular hypertrophy. Claimant's ejection fraction was estimated to be 45%. A chest x-ray report demonstrated mild cardiomegaly and left-side pleural effusion. It was noted that Claimant received various medications during admission and at discharge. Noted discharge diagnoses included diastolic heart failure, DM, and bronchitis. A discharge date of 5/18/13 was noted.

Physician office visit documents (Exhibits C7-C9) dated [REDACTED] were presented. It was noted that Claimant presented for CHF follow-up. It was noted that a recent hospital admission was Claimant's second in 12 months. It was noted that Claimant had no vision problems. CHF was noted as improved. Ranges of motion were noted as normal.

A physician office visit document (Exhibit C6) dated [REDACTED] was presented. It was noted that Claimant presented for DM treatment.

Physician office visit documents (Exhibits C4-C5) dated [REDACTED] were presented. It was noted that Claimant presented for DM and HTN treatment. Assessments of uncontrolled HTN, improving DM, and stable CHF were noted.

An Examination Record (Exhibits B1-B2) dated [REDACTED] for Claimant's vision was presented. It was noted that Claimant complained of recent vision problems, particularly

vision at a distance. It was noted that Claimant's DVA was 20/50 in her right eye and 20/200 in the left eye. Impressions of left eye optic atrophy, bilateral retinopathy, and clinically significant macular edema were noted.

Physician office visit documents (Exhibits C2-C3) dated [REDACTED] were presented. It was noted that Claimant presented for follow-up. Physical examination findings were not notable. A plan to prescribe various meds was noted. Assessments of DM and stable HTN were noted.

A physician office visit document (Exhibit C1) dated [REDACTED] was presented. It was noted that Claimant complained of a left hand rash. An assessment of psoriasis was noted. HTN and DM were noted as stable. A plan to prescribe ointment was noted.

A physician office visit document (Exhibit A6) dated [REDACTED] was presented. Physical examination findings were noted as negative. An assessment of secondary knee osteoarthritis was noted. A plan to continue tramadol was noted. Assessments of improving HTN, CHF, and uncontrolled tachycardia were also noted.

A physician office visit document (Exhibit A5) dated [REDACTED] were presented. Assessments of CHF, DM, obesity, and stage 3 kidney disease were noted. It was noted that Claimant was diet non-compliant. Low-sodium and weight loss diets were recommended.

A physician office visit document (Exhibit A4) dated [REDACTED] were presented. It was noted that Claimant requested to begin insulin.

Physician office visit documents (Exhibit A4) dated [REDACTED] were presented. It was noted that Claimant presented for a follow-up to foot exam. A plan of manual nail debridement of six or more nails was noted.

Physician office visit document (Exhibits A15-A16) dated [REDACTED] were presented. An assessment of peripheral neuropathy was noted.

A physician office visit document (Exhibit A15) dated [REDACTED] were presented. An assessment of foot fungus was noted.

A medication list dated [REDACTED] (Exhibits A11-A14) was presented. Claimant's medications included the following: tramadol, Klor-Con, Lasix, metoprolol, glyceride, betamethasone dipropionate, albuterol, Neurontin, losartan, Dilopen, and various blood testing supplies.

Physician office visit documents (Exhibits D1-D3; E6-8) dated [REDACTED] were presented. It was noted that Claimant presented to establish care after becoming eligible for health insurance. A review of systems noted all negative findings. A physical examination

noted all normal findings other than 1+ pitting bilateral leg edema. Diagnoses of stable neuropathy, mild and persistent asthma, compensated CHF, DM and HTN were noted.

Physician office visit documents (Exhibits E3-E5) dated [REDACTED] were presented. It was noted that Claimant had NYHA-Class II dyspnea but that her symptoms have improved. It was noted that leg edema significantly improved. Right knee pain was reported to be 5/10. It was noted that Claimant was encouraged to exercise aerobically. Diabetic neuropathy was noted to be stable.

Various vision findings (Exhibits E1; E6-E8) dated [REDACTED] were presented. Diagnoses of clinically significant diabetic macular edema, proliferative diabetic retinopathy, and glaucoma were noted in both eyes.

Presented evidence verified a diagnosis of CHF. The most insightful evidence of heart function and restrictions was that Claimant's NYHA functional capacity was Class II (see Exhibit 3). A Class II classification is indicative of one with cardiac disease resulting in slight limitation of physical activity. They are comfortable at rest. Ordinary physical activity results in fatigue, palpitation, dyspnea or anginal pain. When factoring Claimant's symptoms (which were noted to be improved as of [REDACTED]), Claimant likely only has the slightest of restrictions (e.g. no very heavy lifting) to performing basic work activities due to CHF.

Diagnoses of stage 3 kidney disease, recurring leg edema, and neuropathy were verified. When factored with mild CHF, HTN, and DM, some degree of standing, ambulation, and lifting/carrying restrictions can be inferred. Claimant also established a degree of vision restrictions.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, it is found that Claimant established having a severe impairment and the disability analysis may move 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 visual acuity (Listing 2.02) was considered based on complaints of poor eyesight. This listing was rejected due to a failure to establish a corrected eyesight of worse than 20/200 in Claimant's worst eye.

Cardiac-related listings (Listing 4.00) were considered based on Claimant's cardiac treatment history. Claimant failed to meet any cardiac listings.

A listing for chronic skin infections (Listing 8.04) was considered based a psoriasis diagnosis. The listing was rejected due to a failure to establish extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing prescribed treatment.

A listing for peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

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 credibly testified that she worked form 2001-2010 as an accountant. Claimant testified that her vision is too poor to allow her to return to past employment.

DVA was established as 20-70 (right) and 20/200 (left). Acuity was tested with "presenting spectacle Rx"; thus, it appeared that acuity was based on Claimant's then current prescription. A "manifest" DVA of 20/50 (right) and 20/200 (left) was later noted.

Accounting work is understood to be heavily reliant on vision. Claimant's left eye near-legal blindness and decreased right eye vision was persuasive evidence that Claimant vision is impaired to the point where employment heavily reliant on vision would be unreasonable.

Diagnoses of diabetic macular edema, proliferative diabetic retinopathy, and glaucoma were noted in both eyes. The diagnoses, by themselves, were consistent of vision loss which would render the performance of accounting work to be improbable. This conclusion is further supported by specific findings of bilateral *marked* (see Exhibit E2) cap nonperfusion with nve (neovascularization elsewhere in the eye) and fibrosis in Claimant's right and "better" eye.



It is found that Claimant is unable to perform past employment. Accordingly, 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.

Physician statements of Claimant restrictions were not presented. Restrictions can be inferred based on presented documents.

A diagnosis of stage 3 kidney disease was established. Such a diagnosis is likely to produce some degree of fatigue. Diagnoses and treatment of HTN, CHF, DM, knee pain, with recurring edema were also verified. Claimant's combined problems would likely preclude the performance of medium employment. It is found that Claimant is restricted to light employment.

Based on Claimant's exertional work level (light), age (advanced age), education (college graduate but without direct entry into skilled employment due to vision loss), employment history (skilled with no transferable skills, in part, due to vision loss), 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 5/2013;
- (2) evaluate Claimant's eligibility for 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**.



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

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

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

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 48909-8139

cc:

