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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-008704
Issue No.: 2009
Case No.: [redacted]
Hearing Date: September 25, 2014
County: Jackson

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 telephone hearing was held on July 10, 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 Eligibility Specialist [redacted].

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. Claimant submitted new 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) 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 April 22, 2014, Claimant filed an application for MA/Retro-MA benefits alleging disability.

2. On May 27, 2014, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of performing other work.

3. On June 5, 2014, the Department notified Claimant that her application for MA/Retro-MA had been denied.

4. On August 8, 2014, Claimant's authorized representative filed a request for a hearing to contest the Department's negative action.

5. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

6. Claimant is a 51 year old woman whose birthday is [redacted].

7. Claimant is 5'6" tall and weighs 166 lbs.

8. Claimant does not have a drug problem. Claimant smokes a package of cigarettes a day and drinks approximately 10 beers a day.

9. Claimant does not have a driver's license due to a DUI conviction.

10. Claimant has a high school education.

11. Claimant last worked in 2007.

12. Claimant alleges disability on the basis of high blood pressure, coronary artery disease with previous stenting, angina, neck pain/adenopathy, carotid stenosis, chronic right bundle branch block, high cholesterol, hyperlipidemia, hypothyroidism, chronic fatigue, psoriasis, herniated discs, arthritis, myocardial infarction, alcoholism and depression.

13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.

14. Claimant's complaints and allegations concerning her 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.

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, Claimant is not ineligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard.

The medical information indicates that Claimant suffers from high blood pressure, coronary artery disease with previous stenting, angina, neck pain/adenopathy, carotid stenosis, chronic right bundle branch block, high cholesterol, hyperlipidemia, hypothyroidism, chronic fatigue, psoriasis, herniated discs, arthritis, myocardial infarction, alcoholism and depression.

In support of her claim, older records from as early as 2004 were submitted, which document treatment/diagnosis for mild cervical spine degenerative changes at C5-C6, mild disc degeneration at L4-L5, and an old deformity of the left femoral head and neck, most likely due to old trauma and/or old slipped femoral capital epiphysis. Claimant's treating physician completed a Medical Needs form on [redacted], diagnosing Claimant with alcoholism, hyperlipidemia, depression, hypertension and hyperlipidemia. The physician indicated Claimant's physical limitations were expected to last more than 90 days. Claimant was limited to occasionally lifting 10 pounds, and standing and/or walking less than 2 hours in an 8-hour day. The physician opined Claimant could not work at her usual occupation or at any other job for the foreseeable year.

Claimant presented to the emergency department on [redacted] with complaints of severe substernal burning-type pain with radiation into both arms. She also was having severe diaphoresis and shortness of breath. She was evaluated and found to have elevation in her troponins and a non-ST elevation myocardial infarction. She was admitted and started on the chest pain pathway and consultation was obtained with cardiology. She underwent a cardiac catheterization which showed 2-vessel coronary disease, normal left ventricular function and non-ST elevation myocardial infarction. She received stenting of the left anterior descending with a drug-eluting stent. Claimant was discharged on 2/18/14, with a diagnosis of: unstable angina, non-ST elevation myocardial infarction, coronary disease, hypertension, dyslipidemia, and hypothyroidism.

On [redacted], Claimant was admitted to the hospital for chest pain. She had a history of dyspnea on exertion. She had been on atenolol for years for palpitations but she had no other known heart disease prior to having a non-ST elevation myocardial infarction in mid-February. An electrocardiogram showed a right bundle branch block, which was seen in the past. The myocardial perfusion scan revealed a possible defect in the mid to Basilar anteroseptal wall. It was thought that this is soft tissue attenuation less likely ischemia with no signs of definite infarction. Ejection fraction was 65% with no significant wall abnormality.

Claimant underwent a left thyroid biopsy on [redacted]. The procedure resulted in a successful ultrasound-guided biopsy of the more inferior and less vascular of 2 larger nodules in the left thyroid lobe.

On July, 2014, Claimant had a CT of the chest to follow-up on lung nodules. The results were compared with a previous CT dated [redacted] The results show there appears to be some interval improvement in the previously noted nodules of the lungs. Small subcentimeter in size nodules of both upper lobe posteriorly and medially persist or unchanged from prior exam. The previously noted other pulmonary nodules appears to have resolved in the interim. There are a few minimally prominent lymph nodes in the mediastinum, confluent lymph nodes at the level of the right hilum, and a small left adrenal gland mass that are unchanged from previous exam. A follow-up CT scan is recommended in 4-6 months to observe resolution/stability.

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 medical evidence establishing that she does have some physical and mental 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 and the ALJ erred in finding otherwise.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). Claimant's past work history is that of a emergency medical technician and as such, Claimant would be unable to perform the duties associated with her past work. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon Claimant's:

(1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;

(2) age, education, and work experience, 20 CFR 416.963-.965; and

(3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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). At that 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.

Claimant credibly testified that she has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. Claimant reported since her heart attack in February, 2014, she rides on the motorized cart when grocery shopping and finds it hard to look up or down, due to the pain in her neck. Since the heart attack, Claimant states she gets dizzy, light headed, short of breath, tires easily, nauseas and her blood pressure is uncontrolled.

After careful review of Claimant's medical records and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities 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). Based on Claimant's vocational profile (approaching advance age, Claimant is 51, with a high school education and an semi-skilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.14 as a guide. Consequently, the Department's denial of her April 22, 2014, MA/Retro-MA application cannot be upheld.

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 April 22, 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 December, 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: **12/11/2014**

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

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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: [redacted]