

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-005870  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: September 10, 2014  
County: Ingham

**ADMINISTRATIVE LAW JUDGE: Landis Y. Lain**

**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, an in person hearing was held on August 20, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant, [REDACTED] and her authorized hearings representative [REDACTED], [REDACTED], Hearings Facilitator.

**ISSUE**

Did the Department of Human Services (the Department) properly deny Claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On January 24, 2014, Claimant filed an application for Medical Assistance and Retroactive Medical Assistance benefits alleging disability.
2. On April 14, 2014, the Medical Review Team denied Claimant's application stating that Claimant's impairments lacked duration.
3. On April 17, 2014, the Department caseworker sent Claimant notice that her application was denied.
4. On July 5, 2014, Claimant filed a request for a hearing to contest the Department's negative action.

5. Claimant is a [REDACTED]-year-old [REDACTED] whose [REDACTED]. Claimant is 5'2" tall and weighs 133 pounds. Claimant is a [REDACTED]. Claimant is able to read and write and does have basic math skills.
6. Claimant last worked in [REDACTED].
7. Claimant alleges as disabling impairments: lack of teeth, hemorrhage in left eye, nephrostomy, kidney stones, acute kidney failure, scar tissue and blockage.
8. Claimant submitted additional medical information at the hearing which was considered in making this determination.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Claimants have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and

- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the Claimant perform Substantial Gainful Activity (SGA)? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the Claimant have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the Claimant is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the Claimant's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the

analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the Claimant do the former work that he/she performed within the last 15 years? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the Claimant 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? If yes, the analysis ends and the Claimant is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Claimant is not engaged in substantial gainful activity and has not worked since [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates Claimant testified on the record that she lives with her [REDACTED] and is [REDACTED] with no children under 18. She receives retirement income in the amount of \$ [REDACTED] per month. Claimant receives no benefits from the Department of Human Services. Claimant does have a driver's license and does not currently drive. Claimant cooks five times per week and makes things like spaghetti and soup. Claimant grocery shops one time per week with no help needed. Claimant does laundry, mops and cares for the dogs. Claimant builds dollhouses as a hobby. Claimant watches television three hours per week. Claimant testified she can stand and sit with no limits but she does get numb after 45 minutes. She can walk 1 mile. She's able to squat, bend at the waist, shower and dress, tie her shoes but not touch toes. Her back aches and knees are fine. Claimant testified she gets cramps in her hands, arms, legs and feet. She stated that the heaviest weight she can carry is 40 pounds and she can carry 25 pounds repetitively. Claimant testified she does smoke a pack of cigarettes per week. Her doctors told her to quit and she is not in a smoking cessation program.

In [REDACTED] radiology procedure report indicates that patient has a history of renal calculi and ureteral obstruction. She had an uneventful right percutaneous nephrostomy tube exchange, page 27. A [REDACTED] intervention radiology examination indicates that Claimant had a chronic distal right ureteral obstruction and needed a fluoroscopic guided chronic distal right ureteral occlusion and recanalization as well as the balloon delectation for the right ureteral stricture, page 25. A [REDACTED] procedure involved a successful change in upsize of nephrometer catheter for possible placement of an internal ureteral stent, page 24. In [REDACTED] medical examination report indicates blood pressure 125/81, pulse 97 bpm, weight 135 pounds, height 62 inches, BMI 24.68, page 18. She was reviewed for generalized weakness, leg or arm weakness, edema, irregular heartbeat, kidney failure and kidney stones, asthma, and hepatitis, page 18. Claimant has a history of cervical cancer, page 17.

An [REDACTED] consultation report indicates the Claimant was assessed with bilateral hydronephrosis, severe in nature, page 39. She was on hemodialysis at the time of the interview. She is status post external beam radiation, brachytherapy and chemotherapy, page 40

At Step 2, Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is sufficient objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment. For these reasons, this Administrative Law Judge finds that Claimant met her burden of proof at Step 2. Claimant must not be denied benefit eligibility at this step.

At Step 3, the medical evidence of Claimant's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

At Step 4, Claimant testified that she had to leave her job because of her illness. Therefore this administrative law judge finds that Claimant did have the ability to return to her prior relevant work based upon her illness. Claimant is not denied benefits at step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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. 20 CFR 416.967(a).

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... 20 CFR 416.967(b).

Based upon Claimant's testimony, she can perform light or sedentary work even with her impairments. This Administrative Law Judge finds that the objective medical evidence on the record does not establish that Claimant has no residual functional capacity. However, Claimant is not disqualified from receiving disability at Step 5 based upon the fact that she has established by objective medical evidence that she can probably not perform light or sedentary work on a sustained basis with her impairments. Claimant requires continual ongoing treatment for her kidney condition. **Under the Medical-Vocational guidelines, an individual (aged [REDACTED] with a [REDACTED] [REDACTED] and an unskilled work history, who is limited to light work with no transferable skills is considered disabled pursuant to medical vocational rule 202.04.**

The Department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claimant was not eligible to receive Medical Assistance or retroactive Medical Assistance benefits based upon disability.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's application for Medical Assistance and retroactive Medical Assistance. The Claimant should be able to perform a wide range of light or sedentary work even with her impairments. However, pursuant to medical vocational rule 202.04 Claimant is advanced age at age 64 with a high school education and history of unskilled work with no direct entry into the job market; she would be considered disabled.

Accordingly, the Department's decision is REVERSED. The Department is ORDERED to reinstate Claimant's January 24, 2014 Medical Assistance and retroactive Medical Assistance application and if Claimant is otherwise eligible, open an ongoing Medical Assistance case for the months of October, November, December 2013 in January 2014 forward.

No medical review is required because Claimant will turn 65 on January 27, 2015.



Landis Y. Lain  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 10/6/14

Date Mailed: 10/6/14

**NOTICE OF APPEAL:** The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Claimant;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the Claimant 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 the hearing decision is mailed.

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

LYL/tb

cc:

