

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

IN THE MATTER OF:



Reg. No.: 14-011196
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 23, 2014
County: Grand Traverse

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, a telephone hearing was held on October 23, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included, [REDACTED] Eligibility Specialist acting as Hearings Facilitator.

ISSUE

Did the Department of Human Services (the Department) properly deny Claimant's application for Medical Assistance (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 March 5, 2014, Claimant filed an application for Medical Assistance alleging disability.
2. On July 8, 2014, the Medical Review Team denied Claimant's application stating that Claimant could perform prior relevant work.
3. On August 15, 2014, the Department caseworker sent Claimant notice that her application was denied.
4. On August 26, 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 5'3" tall and weighs 225 pounds. Claimant is a [REDACTED]. Claimant is able to read and write and does have basic math skills.
6. Claimant last worked [REDACTED] at a [REDACTED] [REDACTED] where she worked for [REDACTED] before her job was eliminated. She has also worked as a [REDACTED] as an [REDACTED] and [REDACTED] [REDACTED]
7. Claimant alleges as disabling impairments: obesity, arthritis, depression, hypertension, diabetes mellitus, hyperlipidemia, atrial fibrillation, and incontinence, right ankle injury, left hip pain, neuropathy and anxiety.

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 does 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 are 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 alone in the house and she is single with no children under 18. She receives \$ [REDACTED] in Social Security retirement income. She receives no benefits from the Department of Human Services. Claimant does have a [REDACTED] and drives one to two times per week to the grocery store to a friend's house. Claimant does cook daily and makes things like lean pockets or quick and easy meals. Claimant grocery shops one time per week with no help needed. Claimant washes dishes, makes her bed and vacuums. Claimant scrapbooks and reads as a hobby and watches television three hours per day. Claimant testified that she can stand for 10 to 20 minutes of time and can sit for an hour. She can walk 100 to 300 feet. She's able to shower and dress herself. She cannot squat, tie her shoes but can bend at the waist and touch her toes. She has low back pain and right knee pain. She has neuropathy in her left foot and pain in her leg and ankle. She has arthritis in her right thumb. The heaviest weight she can carry is 20 pounds.

A [REDACTED] indicates that her blood pressure was 130/80 on the right arm and 134/76, left arm. Her pulse equals 78 and a regular. Respiration was regular. Weight was 227 pounds. Height 62 inches without shoes. Skin was normal. Visual fields are normal by gross confrontation. Visual acuity in the right eye equals 20/100 correctable 20/40 with pinhole, left eye equals 20/100, correctable 20/40 with pinhole, without corrective lenses. There is no scleral icterus or conjunctival pallor. Pupils are equal and reactive to light. The fundi appear normal. The neck was supple with no masses of thyromegaly. No bruits appreciated over the carotid arteries.

There's no jugular venous distention. AP diameter is grossly normal in the chest. Breath sounds very normal intensity. There are no wheezes, rales or rhonchi. Accessory muscles are not used. In the heart there was no clicker murmur appreciated. There was no S3 or S4. The heart does not appear to be enlarged. No orthopnea is noted. In the vascular area there's no clubbing or cyanosis detected. The peripheral pulses are intact. The feet are warm and normal color. There are no femoral bruits. There is no peripheral edema. There is no erythema. There are no stasis stomatitis ulcerations. In the musculoskeletal area there is no joint instability, enlargement or effusion. Grip strength remained mildly diminished bilaterally. Jamar Dino-meter testing reveals compressions at 40 pounds in right hand and 34 pounds in left hand. Dexterity is intact. The patient is able to pick up a coin, button clothing and open door. The patient has no difficulty getting on and off the examination table, mild difficulty heel and toe walking and mild difficulty squatting. Range of motion of the joints was normal. Motor strength is 5 -/5 in the left upper extremity. There is decreased sensation noted in the feet. There's no shoulder girdle atrophy or spasm. Romberg test is negative, Exhibit A, page 161. A [REDACTED] dated [REDACTED] indicates the Claimant was assessed with depressive disorder, mixed hyperlipidemia, right flank pain, grief, lower urinary tract infection, hypertension and diabetes mellitus uncontrolled, page 138.

An [REDACTED] indicates claimant was assessed with diabetes mellitus type II, uncontrolled, renal failure and LFT elevation, page 136. A December 4, 2013, medical examination report indicates assessed Claimant with renal failure, right knee pain and diabetes mellitus, page 131. A [REDACTED] indicates the Claimant was assessed with a cerebrovascular accident – CVA, hyperlipidemia, diabetes mellitus type II, hypertension, atrial fibrillation, obstructive sleep apnea, morbid obesity and history of urinary tract infection, page 128.

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 sufficient objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record is sufficient to establish that Claimant has a severely restrictive physical impairment. Claimant's combination of impairments is severe and meets duration. Claimant is not disqualified from receiving disability at Step 2. Step 2 is a de minimis standard.

For these reasons, this Administrative Law Judge finds that Claimant has met her burden of proof at Step 2.

If Claimant is not denied at Step 2, the analysis would proceed to Step 3 where 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.

If Claimant is not denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. There is

sufficient evidence upon which this Administrative Law Judge could base a finding that Claimant is unable to perform work in which she has engaged in, in the past based upon She has had a CVA and has uncontrolled diabetes as well as kidney failure. Therefore, Claimant is not denied 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).

Claimant has submitted sufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her based upon her age, education and prior job experience. Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. The Claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work. A Claimant who is advanced age at [REDACTED] with a [REDACTED] and skills are semiskilled work which is not transferable is considered disabled pursuant to medical vocational role 202.06

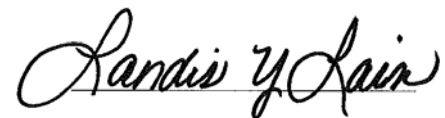
Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that Claimant has no residual functional capacity pursuant to medical vocational rule 202.06. Claimant is not disqualified from receiving disability at Step 5 based upon the fact that she has established by objective medical evidence that she cannot perform sustained light or sedentary work even her impairments. **Under the Medical-Vocational guidelines, an individual (age [REDACTED] with a [REDACTED] [REDACTED] and an unskilled/semiskilled work history who is limited to light work is considered disabled pursuant to medical vocational rule 202.06.**

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 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 benefits based upon disability. The Claimant should be able to perform a wide range of light or sedentary work even with her impairments. However, based upon her advanced age she is considered disabled pursuant to medical vocational rule 202.06. The Department has not established its case by a preponderance of the evidence.

Accordingly, the Department's decision is REVERSED. The Department is ORDERED to reinstate Claimant's Medical Assistance application from [REDACTED] date of application and if Claimant is otherwise eligible, open a Medical Assistance case from [REDACTED].



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

Date Signed: 10/31/14

Date Mailed: 10/31/14

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:

