

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-013453  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: December 03, 2014  
County: Gladwin

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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 December 03, 2014, from Gladwin, Michigan. Participants on behalf of Claimant included [REDACTED] and her authorized hearings representative [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] as hearing facilitator. 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. The Claimant's representative presented additional medical evidence and the record was closed on February 9, 2014.

**ISSUE**

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

**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 14, 2014, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On July 1, 2014, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that she is capable of performing other work despite her impairments.
3. On July 7, 2014, the Department sent the Claimant notice that it had denied the application for assistance.
4. On September 30, 2014, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. The Claimant applied for federal Supplemental Security Income (SSI) benefits but has not been found to be disabled by the Social Security Administration (SSA).
6. The Claimant is a 47 year-old woman whose birth date is [REDACTED].
7. Claimant is 5' 7" tall and weighs 162 pounds.
8. The Claimant is a high-school graduate and attended college.
9. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
10. The Claimant has past relevant work experience as a bartender where she was required to lift up to 75 pounds, stand for up to 8 hours, and reach for objects.
11. The Claimant's disability claim is based on pneumonia, pulmonary bacterial infection, stroke, back/shoulder pain, and endocarditis.

### **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, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients 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. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

### STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant testified that she has not been employed since December of 2013 and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore this Administrative Law Judge finds that the Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

### STEP 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 not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The 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, or result in death.

The Claimant is a 47-year-old woman that is 5' 7" tall and weighs 162 pounds. The Claimant alleges disability due to pneumonia, pulmonary infection, stroke, back/shoulder pain, and endocarditis.

The objective medical evidence indicates the following:

The Claimant was diagnosed by treating physicians with two-level cervical spondylotic myeloradiculopathy. The Claimant was admitted on [REDACTED], for a cervical corpectomy with strut graft placement. The operation was performed without difficulty and she was discharged on [REDACTED], in satisfactory condition.

The Claimant was hospitalized [REDACTED], and discharged [REDACTED] to a rehabilitation facility. She was sedated and intubated for 13 days of that hospitalization. Treating physicians diagnosed the Claimant with mycoplasma pneumonia, respiratory failure, endocarditis, mitral valve endocarditis, and ischemic stroke. A treating physician found that the Claimant's endocarditis is being controlled with antibiotics.

A consultative physician determined that the Claimant is capable of a normal gait. A consultative physician diagnosed the Claimant with mild vascular neurocognitive disorder and moderately-severe alcohol use disorder. A consultative physician found the Claimant to have a normal range of motion through her body. A consultative physician rated the Claimant's motor strength at 4/5 and found her to have normal muscle tone. The Claimant experiences severe pain in her shoulder that restricts her ability to reach for objects. A treating physician found the Claimant to have a slight left arm strength deficit.

The Claimant testified that she consumes alcohol 5 times each week and has a history of abusing methamphetamine. The Claimant smokes cigarettes on a daily basis.

The Claimant is capable of caring for her personal needs including showering and dressing herself without assistance. The Claimant is capable of performing housework such as vacuuming and washing laundry but does so slowly.

The Claimant testified that she has multiple blind spots affecting her vision, but no objective evidence of impaired vision was submitted on the record.

The evidence on the record indicates that the Claimant's has been diagnosed with pneumonia and ischemic stroke by treating physicians, which has resulted in significant impairments to her ability to stand and perform work related tasks. While being treated in a hospital on an inpatient basis, the Claimant's condition prevented her from performing any significant gainful activity. Since being discharged, the Claimant has regained the ability to ambulate with a normal gait. The Claimant retains normal muscle tone and her strength has been rated at 4/5.

The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, Claimant is found not to be disabled at this step. In order to conduct a thorough evaluation of Claimant's disability assertion, the analysis will continue.

### STEP 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? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The Claimant's impairment failed to meet the listing for two-level cervical spondylotic myeloradiculopathy and back pain under section 1.04 Disorders of the spine because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively.

The Claimant's impairment failed to meet the listing for stroke under section 11.04 Central nervous system vascular accident because the objective medical evidence does not support a finding that the Claimant suffers from sensory or motor aphasia resulting in ineffective speech or communication; or significant persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station. The Claimant was hospitalized from December 29, 2013, and discharged on January 20, 2014, to a rehabilitation facility. No evidence was presented on the record of the Claimant's condition in the rehabilitation facility. The Claimant is capable of effective ambulation without assistance. The Claimant has been found to have normal muscle tone and her strength has been rated at 4/5. The Claimant is capable of effective speech communication.

The Claimant's impairment failed to meet a listing for pneumonia or pulmonary infection under section 3.00 Respiratory System because the objective medical evidence does not support a finding that the Claimant's condition meets the criteria for any impairment listed in this section.

The Claimant's impairment failed to meet a listing for endocarditis under section 4.00 Cardiovascular system because the objective medical evidence does not support a finding that the Claimant's condition meets the criteria for any impairment listed in this section.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

#### STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do her past relevant work, the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

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.

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).

To determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

The Claimant is capable of effective ambulation without assistance. The Claimant is capable of vacuuming floors, preparing meals, and washing dishes. The Claimant has normal muscle tone and her strength has been rated at 4/5. The Claimant has a slight left arm strength deficit but is capable of dressing herself and showering. After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567 and 416.967.

The Claimant has past relevant experience as a bartender where she was required to lift objects weighing 50 pounds. The Claimant's prior work fits the description of unskilled and medium work. There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work substantially similar to work performed in the past.

#### STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, she is not disabled. If the Claimant is not able to do other work and meets the duration requirement, she is disabled.

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).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do less strenuous tasks if demanded of her. The Claimant's testimony as to her limitations indicates that she should be able to perform light work.

The Claimant was able to answer all the questions at the hearing and was responsive to the questions. The Claimant displayed effective speech communications. The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.


Claimant is 47-years-old, a younger person, under age 50, with a high school education and above, and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform light work. Medical Assistance (M.A.) is denied using Vocational Rule 202.20 as a guideline.

It should be noted that the Claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the Medical Assistance (M.A.) benefits.

### **DECISION AND ORDER**

Accordingly, the Department's determination is **AFFIRMED**.

  
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Kevin Scully  
Administrative Law Judge  
for Nick Lyon, Acting DHS Director  
Department of Human Services

Date Signed: **2/23/2015**

Date Mailed: **2/23/2015**

KS/las

**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 48909-07322

cc:

