

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

IN THE MATTER OF:

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Reg. No.: 14-013874
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 14, 2015
County: WAYNE- 19 (INKSTER)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 three way telephone hearing was held on January 14, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ the Claimant's Authorized Hearing Representative, also appeared. Participants on behalf of the Department of Human Services (Department) included ██████ ██████ Eligibility Specialist, Medical Contact Worker.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) 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. The Claimant applied for Medical Assistance (MA-P) on October 27, 2010 with a retro application for the month of July 2010, only.
2. At the hearing, the Claimant's AHR presented a fully favorable decision finding Claimant eligible for SSI with an onset date of October 27, 2010. Claimant Exhibit A.
3. On April 1, 2014, a Decision was issued on remand from the SSA Appeals Council which found the Claimant was eligible for Supplemental Security Income (SSI) beginning October 27, 2010, and that Claimant met Listing 3.02(A), at least as early as October 2010. Claimant Exhibit A, page 10.

4. The Claimant has alleged physical disabling impairments due to chronic severe COPD.
5. The Medical Review Team denied the Claimant's MA-P application on July 12, 2014.
6. The Department sent the Claimant/ AHR a Notice of Case Action on July 22, 2014.
7. The Claimant's AHR requested a timely hearing on October 9, 2014.
8. At the time of the hearing, the Claimant was 58 years of age with a birth date of [REDACTED]. At the time of her application the Claimant was 54 years of age. The Claimant has no past relevant work history and was not working at the time of the hearing.
9. The Claimant's impairments have lasted or are expected to last 12 months duration or more.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

To be automatically eligible for MA, an SSI recipient must be a Michigan resident and cooperate with third-party resource liability requirements. BEM 150 (10/1/10), p. 1. Ongoing MA eligibility begins the first day of the month of SSI entitlement. BEM 150, p. 1. Retro MA coverage is available back to the first day of the third calendar month prior

to entitlement for SSI. BAM 115 (10/1/10), p. 8. A person might be eligible for one, two or all three retro months, **even if not** currently eligible. BAM 115, p.9. To be eligible for a retro MA month, the person must meet all financial and non-financial (i.e., be disabled) factors in that month and have unpaid medical expense incurred during the month or have been entitled to Medicare Part A. BAM 115, p. 10. A DHS-1171 (application) is not required for SSI recipients. BAM 115, p. 7.

In this case, it is determined that the Claimant is eligible for Medical Assistance MA-P as of the SSA decisions onset date, October 27, 2010. As the Claimant also seeks retroactive medical assistance coverage for the month of July 2010 a further analysis of the medical evidence is required to determine Claimant's eligibility.

The person claiming a physical or mental disability has the burden to establish it 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not

meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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 dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Claimant has alleged physical disabling impairments which include chronic severe COPD.

The Claimant has not alleged any mentally disabling impairments.

A summary of the medical evidence follows.

By way of background, the SSA ALJ's Decision found that the Claimant's impairments met listing 3.02 based upon the symptoms and the extent to which these symptoms presented can reasonably be accepted is consistent with the objective medical evidence and the other evidence as well as opinion evidence presented. Referenced in that decision was a pulmonary function test dated May 24, 2011 which demonstrated that the listing was met. The decision also referenced a consultative examiner's opinion "that despite the Claimant smoking, her breathing problems 'appear to be from COPD'". The decision also notes that the record in that case documented multiple hospitalizations for complaints of severe breathing problems and shortness of breath associated with COPD prior to October 2010. Based on these documented hospitalizations, the SSA administrative law judge found they supported a finding that the limitations observed in May 2011 were present at least as early as October 2010. Claimant Exhibit A, page 10.

The Claimant presented evidence of an emergency room visit which occurred on July 13, 2010. The Claimant was seen on that day for multiple complaints which included exacerbation of COPD, and pain and swelling in vagina on left side. The notes indicate that the Claimant had also been tested for COPD exacerbation the prior week. On examination, the examination report noted COPD/emphysema, and pain in vagina. The report also noted coarse breath sounds bilaterally and an enlarged vulva draining a small amount of pus. The plan was to address the COPD exacerbation and manage it in the ER, as well as address the vulvar abscess and to irrigate it and drain it. Additional records notes were provided for this ER visit but do not detail any further details of emergency room treatment for the COPD.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities.

Accordingly, the 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, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts disabling impairments due to Chronic severe COPD

Listing 3.02 was reviewed and it is determined that the Claimant meets the medical equivalent of the listing. The Claimant's SSI disability date as noted previously was October 27, 2010 and now the Claimant seeks to have retroactive coverage for the month of July 2010, only, three months prior to the onset date. Although no pulmonary function test was presented for the three month time period in question, it is reasonable to infer from the October 27, 2010 finding of disability by the SSA Decision that the Claimant's COPD condition that existed in July 2010, three months prior to the onset date, would not have been appreciably different than Claimant's condition in October 2010, nor is it reasonable to assume that the Claimant's severe COPD would have somehow changed appreciably in three months.

Additionally, although such analysis is not necessary, as the Claimant has been found disabled at Step 3, had a further analysis been required, the Claimant would have been found disabled at Step 5 as well, as it is determined that the severity of the COPD would have required a finding that the Claimant maintains the residual function capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). No Step 4 analysis is required as the Claimant has no past relevant work history.

Therefore, based on the foregoing review of the record using the Medical-Vocational Guidelines (20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 201.12, it would be found that the Claimant was disabled for purposes of MA-P at Step 5. Thus as a person approaching advanced age, as the Claimant was 54 at the time of the application, with a high school education and no past relevant work history and sedentary capacity, Claimant would have been found disabled as well at Step 5 as well.

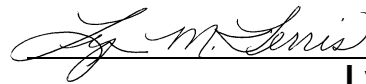
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant **disabled** for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to initiate a review of the application dated October 27, 2014 and retro application, if not previously done, to determine Claimant's non-medical eligibility.
2. The Claimant shall be determined disabled and eligible for MA-P, with an onset date of October 27, 2010 based upon the SSA Decision finding Claimant eligible for SSI.
3. The Claimant shall also be determined disabled as of July 2010 for purposes of the retro MA-P application.
4. A review of this case shall be set for February 2016.



Lynn Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/10/2015**

Date Mailed: **2/10/2015**

LMF/tm

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]