

**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.: 14-014003
Issue No.: 2009
Case No.: ██████████
Hearing Date: November 17, 2014
County: Oakland-District 4

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 November 17, 2014, from Pontiac, Michigan. Participants on behalf of Claimant included Claimant and ██████████, Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included ██████████, Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

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 March 14, 2014, Claimant submitted an application for public assistance seeking MA-P benefits, with request for retroactive coverage to December 2013.
2. On May 2, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On August 11, 2014, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On September 9, 2014, the Department received the AHR's timely written request for hearing.
5. Claimant alleged physical disabling impairment due to cyclic vomiting syndrome and gastroesophageal reflux disease (GERD).

6. At the time of hearing, Claimant was [REDACTED] years old with an [REDACTED], birth date; she was [REDACTED] in height and weighed [REDACTED] pounds.
7. Claimant is a high school graduate and completed the program at the [REDACTED]
8. Claimant has an employment history of work as a teller, a waitress, and a sales associate at a clothing store.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

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.

Department policies are found in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Bridges Reference Tables (RFT).

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2013); BEM 261 (July 2013), p. 1. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) 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). A client is disabled for MA-P purposes if the client's condition is sufficient under Title XVI of the Social Security Act to establish eligibility for Supplemental Security Income (SSI) receipt. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, federal regulations require that the trier-of-fact apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and

- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant testified that she worked as a sales associate until June 2014, working 20 hours weekly for \$8.75 per hour and worked in July 2014 for a single month as a waitress for 30 hours weekly at \$2.65 plus tips. The amount of monthly SGA for non-blind individuals in 2014 is \$1070. Claimant's testimony establishes that she has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and

meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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 416.920(a)(4)(ii); 20 CFR 416.920(c). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may 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). However, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

In the present case, Claimant alleges physical disabling impairment due to cyclic vomiting syndrome and GERD. The medical evidence presented at the hearing was reviewed and is summarized below.

Claimant's medical records show a diagnosis of cyclical vomiting syndrome. Claimant's medical records for her most recent August 29, 2014 to August 31, 2014 hospitalization showed that Claimant had a [REDACTED] history of cyclic vomiting and anxiety and additional diagnoses for leukocytosis, hypokalemia, anxiety, urinary tract infection, and marijuana use, which Claimant admitted she used daily to decrease nausea (Exhibit A, pp. 5, 8).

The record shows that Claimant was treated at the emergency department following episodes of nausea and vomiting on multiple occasions: February 8, 2013 (Exhibit 1, pp. 137-140); April 9, 2013 (Exhibit 1, pp. 110-111); April 24, 2013 (Exhibit 1, pp. 103-109); July 30, 2013 (Exhibit 1, pp. 83-89); July 31, 2013 (Exhibit 1, pp. 78-82); August 1, 2013 (Exhibit 1, pp. 75-77); October 5, 2013 (Exhibit 1, pp. 68-74); October 22, 2013 (Exhibit 1, pp. 53-60); November 9, 2013 (Exhibit 1, pp. 51-52); November 14, 2013

(Exhibit 1, pp. 43-50); November 30, 2013 (Exhibit 1, pp. 36-42); December 31, 2013 (Exhibit 1, pp. 18-35); May 15, 2014 (Exhibit A, pp 56-63); July 19, 2014 (Exhibit A, pp. 46-55); August 27, 2014; August 28, 2014 (she was admitted when she returned on August 29, 2014, the third time in three days) (Exhibit A, pp. 5-45); and September 24, 2014 (Exhibit A, pp 1-4).

Claimant's medical records that she was admitted following bouts of vomiting and nausea on the following occasions: March 16, 2013 to March 19, 2013 (Exhibit 1, pp. 112-136); May 26, 2013 to May 28, 2013 (Exhibit 1, pp. 90-102); October 7, 2013 to October 8, 2013 (Exhibit 1, pp. 61-67); February 26, 2014 to March 1, 2014 (Exhibit A, pp. 78-104); May 13, 2014 to May 14, 2014 (Exhibit A, pp. 64-77); and August 29, 2014 to August 31, 2014 (Exhibit A, pp. 1-45).

Claimant consistently denied having abdominal pain. A May 24, 2013 x-ray of the abdomen shows no acute intra-thoracic process and no acute intra-abdominal process (Exhibit 1, p. 105). A December 31, 2013 x-ray of the abdomen was unremarkable, showing no changes from the May 24, 2013 x-ray (Exhibit 1, p. 27). An August 30, 2014 x-ray of the abdomen showed no pneumoperitoneum and nonobstructive bowel gas pattern (Exhibit A, p. 26). A pathology report for a specimen examined on February 28, 2014 showed moderate chronic gastritis without activity and no helicobater pylori (Exhibit A, p. 97). Claimant's last esophagogastroduodenoscopy performed in 2013 was negative (Exhibit A, p. 8).

When she went to the hospital, Claimant was regularly treated with a regimen of Reglan, Phenergan, Ativan and Benadryl, which relieved her symptoms. She was given potassium to treat any episodes of hypokalemia and treated for dehydration.

The foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination as to whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual'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 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

In this case, the evidence shows diagnosis of, and treatment for, cyclic vomiting syndrome and gastritis and anxiety associated with her vomiting episodes. In connection with the cyclic vomiting syndrome and gastritis diagnoses, Listing 5.00 (digestive system), particularly 5.08 (weight loss due to any digestive disorder) was reviewed. To meet a listing under 5.08, the medical evidence must show that, despite continuing prescribed medical treatment, the individual has a body mass index (BMI) of

less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period. The medical records list Claimant's height at 167.54 cm. On December 31, 2013, her weight was 47.712 kg (Exhibit 1, p. 28). Calculated in accordance with 5.00G.2.b., Claimant's BMI was 16.997 on December 31, 2013. On May 15, 2014, her weight was 49 kg (Exhibit A, p. 61). Calculated in accordance with 5.00G.2.b., Claimant's BMI was 17.456 on May 15, 2014. Because Claimant's BMI was less than 17.50 on two dates within a consecutive 6-month period but more than 60 days apart, Claimant meets the listing under 5.08.

Notwithstanding the conclusion that the medical evidence shows that Claimant's impairment meets the severity to the criteria in Appendix 1 of the Guidelines to be considered as disabled, 42 USC 423(d)(2)(C) of the Social Security Act provides that an individual is not considered disabled if alcoholism or drug addiction is a contributing factor material to the determination that the individual is disabled. Because evidence in the medical record and Claimant's testimony at the hearing showed that she regularly used marijuana, 20 CFR 416.935(a) requires a determination of whether Claimant's drug addiction or alcoholism (DAA) is a contributing factor material to the determination of disability. The key factor in determining whether DAA is a contributing factor material to the determination of disability is whether the client would be disabled if he or she stopped using drugs or alcohol. 20 CFR 416.935(b)(1). This requires consideration of whether the current disability determination would remain if the client stopped using drugs or alcohol. 20 CFR 416.935(b)(2). If the remaining limitations would not be disabling, the drug addiction or alcoholism is a contributing factor material to the determination of disability. 20 CFR 416.935(b)(2). The client continues to have the burden of proving disability throughout the DAA materiality analysis. Social Security Ruling (SSR) 13-2p(5)(a).

The record shows that Claimant admitted marijuana use to hospital attendants on multiple occasions (Exhibit 1, pp. 18, 25, 44, 51, 64). She was advised to not use marijuana on May 13, 2014 (Exhibit A, p 66½). The attending physician reported on August 29, 2014, that Claimant had been advised on multiple occasions that her marijuana use could be a possible cause of her cyclic vomiting and indicated she had a history of cyclic vomiting syndrome in addition to THC (tetrahydrocannabinol) (Exhibit A, pp. 14-15). At the hearing, Claimant admitted using marijuana for medicinal purposes to reduce her nausea and acknowledged that she did not have a medical marijuana card.

In this case, the medical record shows that Claimant's marijuana use may be a possible cause of her cyclic vomiting syndrome, but Claimant continued to use marijuana as of the hearing date. Because Claimant was advised that her cyclical vomiting syndrome is due to her marijuana use, her marijuana use is material to the determination of her disability. Because Claimant's marijuana use is material to her disability, consideration of whether Claimant would still be disabled at Steps 3 or 5 of the sequential evaluation process in the absence of DAA, or a finding that Claimant would not be disabled at Steps 2, 4, or 5 of the sequential evaluation in the absence of DAA, must be made. SSR 13-2(14)(a).

With respect to Step 3, a determination must be made whether Claimant would satisfy the severity of Listing 5.06 in the absence of the DAA. At the hearing, Claimant testified that her vomiting resulted in weight loss. Because the absence of marijuana use could alleviate the effects of her cyclical vomiting syndrome, it would also affect her BMI. Therefore, Claimant's physical impairments, in the absence of DAA, would not meet, or equal, the severity of a listing under 5.06.

Claimant's medical record also references anxiety in connection with her cyclical vomiting syndrome. Listing 12.00 concerning mental disorders, specifically Listing 12.04 (affective disorders) was considered in evaluating Claimant's mental condition but Claimant's mental impairments are insufficient to meet, or to equal, the severity of a listing.

Because Claimant's physical and mental conditions are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling),

the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength (exertional) demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

With respect to her exertional limitations, Claimant testified that, because of flare ups of her vomiting episodes resulting from excess activity, she avoided too much activity at once but otherwise had few physical limitations due to her condition. There were no physical limitations identified on the record concerning Claimant's ability to stand, lift, sit, or use her hands or feet. Therefore, based on the evidence presented, Claimant maintains the physical capacity to perform, at a minimum, light work as defined by 20 CFR 416.967(b).

Although anxiety is referenced in the medical record, there are no mental limitations identified on the record. Therefore, Claimant has, at most, mild limitations on her mental capacity to perform basic work activities.

Claimant also alleges nonexertional limitations due to her cyclical vomiting syndrome, primarily due to the fact that she is unable to perform consistent job duties due to continuous flare up of her symptoms. Where an impairment causes limitations and restrictions, other than exertional and nonexertional limitations, that affect other work-related abilities, any resulting limitations and restrictions which may reduce Claimant's ability to do past work and other work must be assessed in deciding the RFC. 20 CFR 416.945(d). In this case, Claimant's medical records showing ongoing emergency room visits, with more than 20 visits to the emergency room or hospital admissions between February 28, 2013 and August 31, 2014, support her testimony that her ability to engage in employment is limited by her impairment. Therefore, these limitations must also be considered with respect to Claimant's RFC.

Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that

has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Claimant's work history in the 15 years prior to the application consists of work as a waitress (medium, unskilled), sales associate (light, unskilled), and a teller (light, unskilled). As determined in the RFC analysis above, Claimant is limited to, at minimum, light work activities. Therefore, Claimant retains the RFC to meet the physical demands of past employment. Claimant has further limitations due to her inability to participate in consistent, ongoing employment due to her impairments. Her medical records support her testimony, showing ongoing emergency room visits, with more than 20 visits to the emergency room or hospital admissions between February 28, 2013 and August 31, 2014. However, in the absence of DAA, there is an expectation that her vomiting and nausea flare ups would be reduced. Therefore, in light of the entire record and Claimant's RFC, it is found that, in the absence of DAA, Claimant is able to perform past relevant work. Accordingly, Claimant is found **not** disabled at Step 4, and no further analysis is required.

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds Claimant **not** disabled for purposes of the MA-P benefit program.

DECISION AND ORDER

Accordingly, It is ORDERED that the Department's determination is AFFIRMED.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/17/2014**

Date Mailed: **12/17/2014**

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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]