

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

IN THE MATTER OF:



Reg. No.: 14-017198-R
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 7, 2014
County: Wayne-District 19

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Claimant's Authorized Hearing Representative's (AHR) timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on August 7, 2014, and mailed on October 7, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on December 12, 2014.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) 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. Findings of Fact No. 1 through 11 under Registration Number 2014-28766 are incorporated by reference.
2. On August 7, 2014, a hearing was held resulting in a Hearing Decision mailed on October 7, 2014, which found Claimant was not disabled.

3. On October 29, 2014, Claimant's authorized representative requested reconsideration/rehearing.
4. The Request for Rehearing/Reconsideration was GRANTED.

CONCLUSIONS OF LAW

In the instant case, Claimant's authorized representative requested a rehearing/reconsideration asserting misapplication of policy that would impact the outcome of the original hearing decision.

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). 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 an 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).

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).

Steps 1 and 2 are incorporated by reference from pages 4-7 of the Hearing Decision Registration No. 2014-28766, dated October 7, 2014. The only issues under review in this Reconsideration are Steps 3, 4 and 5.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of chronic liver disease, cirrhosis, ascites, hepatitis C, hypoglycemia, seizures, alcohol abuse, and coma.

Listing 5.05(B). Chronic liver disease is defined as ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, on at least 2 evaluations at least 60 days apart within a consecutive 6 month period documented by paracentesis.

Claimant submitted documentation from an August 25, 2013, admission where she complained of abdominal distention and pain. A large amount of ascites were noted. An impression of likely decompensated cirrhosis or severe EtOH hepatitis was also noted. Claimant underwent CT guided abdominal paracentesis and 6 liters of fluid were removed. Claimant was also admitted in September and October, 2013, where ascites were noted and paracentesis performed. On December 9, 2013, Claimant was admitted with a 15 pound weight gain over 3 weeks. It was noted 5 liters of clear fluid were removed via paracentesis.

On [REDACTED], Claimant was again admitted for abdominal pain and swelling. The records indicate Claimant had not taken her medications in two months due to a lack of money. Claimant underwent paracentesis which removed 6 liters of fluid. A discharge diagnosis of ascites was noted.

In this case, Claimant's multiple hospital admissions for ascites requiring paracentesis are persuasive evidence that Claimant meets subsection B of the above listing. Here, Claimant on at least 2 evaluations at least 60 days apart within a consecutive 6 month period underwent paracentesis due to ascites.

While it was noted during her admission in December, 2013, that Claimant had not taken her medications in two months due to a lack of funds, the inability to afford prescribed medications is a good cause reason for a failure to follow treatment, and hence does not preclude a finding of disability. SSR 82-59.

Claimant's condition resulted in death on [REDACTED]. In light of the foregoing, Claimant's impairments meet, or are the medical equivalent, of a Listing within Listing 5.00, specifically, 5.05(B). Accordingly, Claimant is found disabled at Step 3 with no further analysis required.

As a result, the ALJ's determination which found Claimant not disabled at Step 5 (residual functional capacity) is VACATED and the Department's determination which found Claimant not disabled is REVERSED.

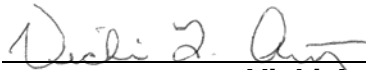
DECISION AND ORDER

Based on the above findings of fact and conclusions of law, it is determined that the Administrative Law Judge erred in affirming the Department's determination which found Claimant not disabled.

Therefore, it is ORDERED:

1. The ALJ's Hearing Decision mailed on October 7, 2014, under registration Number 2014-28766 which found Claimant not disabled is **VACATED**.
2. The Department's determination which found Claimant not disabled is **REVERSED**.
3. The Department shall initiate processing of the May 16, 2013, application to include any applicable requested retroactive months, to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review Claimant's continued eligibility in January, 2016, in accordance with Department policy.

IT IS SO ORDERED.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/12/2015**

Date Mailed: **1/12/2015**

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NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

